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Current Topics.

Advanced Legal Studies.

THE announcement that the Lord Chancellor has appointed an influential Committee to advise as to the best practicable means of carrying into effect the recommendation made a year or two ago for the establishment in London of an institute for the promotion of advanced studies in the history and principles of law should receive a warm welcome from all who realise the importance of improving the professional equipment of all for whom the law is to be their calling in life. LORD MACMILLAN, with whom are to be associated Mr. Justice FARWELL and several very experienced teachers of law, has been appointed Chairman, and no more excellent choice could have been made. That very learned Lord of Appeal has always entertained a lofty conception of the important functions of lawyers, and has expressed a just appreciation of the place they hold in the life of the nation. His views on this subject are happily expounded in more than one of the papers in the collection of essays he issued not long ago under the title "Law and Other Things," a book which can be read and re-read with great satisfaction and enjoyment. In these he rejects the all too commonly diffused notion that lawyers are merely contentious persons engaged in venal controversies and disputes; and according to him the well-equipped lawyer must not confine his studies to books of practice of the type of the White Book and the Red Book, however useful these compilations may be; he should read widely and occasionally, as it is happily put, he should "lift his eyes from his desk and look out of the windows on the wider world beyond," for, as he added, there can be a too sedulous devotion to text-books of the law, and he strongly deprecated the example of Chief Baron PALLES being followed, namely, of carrying "Fearne's Contingent Remainders" with him for reading on his honeymoon! We shall hope great things from the setting up of the Institute, for which the Committee is to suggest a constitution and a delimitation of its functions.

Legal Education in the Past.

EFFICIENT education in the law is a comparatively modern thing. It was non-existent in LORD ELDON'S time, and even late in the nineteenth century the idea that lawyers, especially those connected with one or other of the Inns of Court, should receive at least some effective training for the duties they were to discharge, training, that is, in the principles of the law, was only beginning to be realised, but in 1870 it was felt that the old farcical "exercise" on the problem, "Whether C should have the widow's estate," must be superseded. Accordingly, lectures began to be provided, and an examination prior to call was also instituted, but unfortunately, as BAGEHOT, writing in that year, pointed out, these novelties were erected on an alternative: a student might either pass an examination or else he might attend lectures. BAGEHOT went on to mention that on one occasion he met a barrister and county magistrate whose legal attainments he greatly suspected, so he asked him: "How did you get through the Bar examination?" "Oh," was the reply, "I was not examined; I attended lectures." "And were the lectures good?" asked BAGEHOT. "Oh," said the magistrate, "I do not know about that; I did not listen much. I read *Punch* and that sort of thing." No such easy access is accorded to the present-day student who wishes to be called to the Bar or to be admitted as a solicitor; now the examinations are, as they should be, real tests of the candidate's legal knowledge; but there is still room for the work of the Institute which it is proposed to establish and for whose success we shall look forward with high expectations.

Additional Judges.

AN interesting and important announcement was made by the Attorney-General in the House of Commons on Monday when the Administration of Justice (Miscellaneous Provisions) Bill was read a second time. As readers know, the measure has already passed through the House of Lords. Its main provisions have already been indicated in some detail in our columns, and it is not proposed to repeat the information here, but readers may have missed the statement to which reference has just been made, and it will not, therefore, be unfitting to indicate its substance. Sir DONALD SOMERVELL said that he was authorised to give an assurance that the Government proposed as soon as time permitted to lay before Parliament proposals for further additions to the judicial bench of the Supreme Court. He could not, for reasons which, he said, members would appreciate, enter into questions as to the form those proposals would take, but, realising how closely related that question was to the general question of the administration of justice raised by the Bill before the House, he desired to make it clear that the Government had that aspect of the matter very much in mind. Practitioners

will welcome this statement, for, although it is hardly possible to assent to the proposition put forward by one member that delayed justice is the most serious form of injustice without the qualifications which the said member doubtless had in mind, the serious effects of delay, which is not to be measured merely in terms of inconvenience but may in some circumstances amount to something approaching a denial of justice, is fully appreciated by members of the legal profession.

Restaurateur and Customers.

MR. JUSTICE HILBERY in the course of a recent unreported case, dealt with the position in regard to a restaurant-keeper's responsibility to customers who lunch or dine together. The matter arose in the course of an action in which a husband and wife sought to recover damages from the proprietors of a restaurant (against whom no allegation of negligence was made) for alleged breach of warranty in supplying contaminated food. According to a note on the matter in *The Times*, it was submitted that there could be no case to go to the jury on behalf of the wife because the action was in contract and the meal was ordered and paid for by the husband. The learned judge stated that, as the matter stood, his view was that where two or more persons went into a restaurant to eat a meal, the keeper of the restaurant provided to each individual the food to be eaten by him, and each undertook to pay the restaurateur for what he consumed. As between the guests themselves, one might have assumed the position of host and the others might go in the belief that they would not in fact be called on to pay. But that private arrangement did not affect the position as between the consumers and the restaurateur, and each remained liable to pay for his or her own meal. The learned judge recognised, however, that there might be circumstances in which a proprietor might be found to have contracted solely with the person ordering the meal, and instanced as an example of a case where such might apply a person ringing up and saying "I want to order a dinner to be provided for guests of mine." His lordship emphasised that each case must depend on the particular facts, but in the case before the court he decided that there was a contract with the wife as well as with the husband. The position dealt with is one of such common occurrence that it has been thought desirable to reproduce the substance of the paragraph in *The Times* for the benefit of such of our readers who may not have perused it.

Hire-Purchase Bill: Amendments.

THE amendments introduced during the final stages in the House of Commons of the Hire-Purchase Bill, which was read a third time last Friday week, should be shortly indicated. One of these is a new clause to the effect that if a hirer fails without reasonable cause to give information as to the whereabouts of the goods concerned, within fourteen days of a written request, he shall be liable on summary conviction to a fine not exceeding £10. Another new clause makes special provision for costs incurred by owners with respect to gas and water pipes and electrical installations where the work has no compensation value. Clause 1 of the Bill, which specifies a general limit of £100 with reference to the value of goods in a hire-purchase agreement to which the measure applies, has been amended by a provision to the effect that the Bill shall apply to all hire-purchase and credit-sale agreements relating to livestock under which the price does not exceed £500, and by a further provision limiting the application of the Bill in the case of hire-purchase agreements relating to motor vehicles (including accessories), railway wagons, or other railway rolling stock where the price does not exceed £50. An amendment to cl. 2 provides that a hire-purchaser shall be in a position to know the ordinary cash price at which any person desiring to pay cash could obtain the goods and what the hirer is paying for the hire-purchase accommodation, a similar amendment having been introduced into cl. 3 with reference to credit-sale agreements. Finally, mention should be made of an amendment to cl. 4 providing that a hirer shall, before the last payment under an agreement falls due, be entitled to determine the agreement by giving notice of the termination, and shall be liable to pay any sums due under the agreement and unpaid, and the amount, if any, by which one-half (and not as originally provided one-third) of the hire-purchase price exceeds the total sum paid by him under the agreement. This amendment only relates to hirers voluntarily handing back the goods, those not in a position to continue their payments still being protected by the courts under cl. 9 after one-third has been paid.

The Housing (Rural Workers) Amendment Bill.

BRIEF mention should be made of some of the amendments proposed to be introduced into the branch of the law embraced by the Housing (Rural Workers) Acts, 1926 and 1931, by the new Bill which was read a second time in the House of Commons on Monday. Recommendations of the Rural Housing Sub-Committee of the Central Housing Committee are incorporated in the provisions that local authorities shall be empowered to pay grants by instalments during the progress of works, and in another provision to the effect that on breach of the special conditions attaching to a grant or voluntary repayment of grant an owner shall be required to repay an amount proportionate to the unexpired portion of the twenty-year period during which the conditions apply, and not, as at present, the whole of the amount of the grant with compound interest. It is thought that the present obligation incurred on breach of the conditions has been one of the main factors discouraging owners from utilising the facilities offered by the existing Acts. It is proposed to impose a further condition to the grant of money to the effect that during the twenty-year period all reasonable steps must be taken to secure maintenance of the dwelling so that it shall be in all respects fit for habitation. On failure of the owner to observe this condition, a local authority will be in a position to require repayment of the appropriate portion of the grant and the grant itself will cease. Another change allows an owner to increase the rent by four per cent. of his expenditure in cases where a second grant is given under the measure, while another clause enables a local authority to give an owner who, before the overcrowding provisions came into operation, received a maximum grant of £50 an additional grant, not exceeding £50, or two-thirds of the cost, for work done to abate overcrowding. The same clause makes provision for a further grant when an owner has not received the maximum grant on his first application. The co-ordinating of the provisions of these Acts with those of other housing enactments instanced by the last-mentioned clause is furthered by the provisions of cl. 1, which extends their operation until 30th September, 1942, which is the date by which any alterations in the subsidy for agricultural housing provided by the Housing (Financial Provisions) Act, 1938, will take effect following the review of Exchequer subsidies in 1941.

Juvenile Courts and the Education Act.

SECTION 46 (3) of the Children and Young Persons Act, 1933, empowers the Lord Chancellor, by rules, to assign to juvenile courts the hearing of any applications for orders or licences relating to children or young persons, being applications cognisable by justices, courts of summary jurisdiction or petty sessional courts, if, in his opinion, it is desirable in the interests of the children and young persons concerned that such applications should be heard by juvenile courts. A Home Office circular has recently been sent to juvenile court justices, clerks to justices, local education authorities and others concerned, drawing attention to the fact that the Lord Chancellor has made rules, dated 12th March, 1938, assigning to juvenile courts the hearing of complaints under ss. 44, 45 and 54 of the Education Act, 1921. These sections relate respectively to the making of school attendance orders, to the proceedings to be taken where such orders are disobeyed,

and to the making of orders requiring defective or epileptic children to be sent to suitable classes or schools. It is pointed out that though the proceedings in these sections are directed against the parents, the welfare of the children is the main consideration, and that the juvenile courts are already familiar with cases arising under ss. 62 and 64 of the Act of 1933—sections concerned respectively with children and young persons needing care or protection, and refractory children and young persons. Surprise is expressed that so little use has been made of the method of boarding out truant children as an alternative of sending a child to an approved school, and it is pointed out that s. 44 (2) of the Children and Young Persons Act, 1933, forbids a court to order a child under ten to be sent to an approved school unless for any reason, including the want of a fit person of his own religious persuasion who is willing to undertake the care of him, the court is satisfied that he cannot be dealt with otherwise. It is also stated that there are still a number of boys and girls sent to approved schools who by reason of their ill-health—mental or physical—are unsuitable for training in the schools and the Secretary of State expresses the hope that juvenile courts will take care to satisfy themselves before making approved school orders that the health of the persons concerned is such that they will be able to profit by the training given. The new rules came into operation on 1st May.

Recent Decisions.

In *Fowke* v. *Fowke* (*The Times*, 3rd May), FARWELL, J., held that a widow, as sole executrix and beneficiary under the will of her husband was bound to pay to his first wife an annuity or the equivalent provided for by a separation deed entered into between the deceased and his former wife, against whom he was subsequently granted a decree of nullity of marriage on ground of her incapacity. The first marriage, for want of consummation, was no marriage in fact, but the parties knew it had not been consummated and their status was not so different from that of married people as to render the agreement one for which there was no consideration.

In *Thompson* v. *Blundy and Others* (*The Times*, 5th May), DU PARCQ, J., awarded the plaintiff, a film actress engaged in making a film at the time, £5,000 damages against her chauffeur for personal injuries and consequential loss arising out of a collision between the car in which she was riding and the chauffeur was driving and a car with which the other defendants were concerned. Both drivers were found to have been negligent, and the plaintiff's claim against the other defendants, therefore, failed.

In *Fassbender, F. L.* v. *Fassbender, H.* (*The Times*, 6th May), HENN COLLINS, J., overruled a preliminary objection to the effect that a suit for restitution of conjugal rights was misconceived where there had never been cohabitation between the spouses. On the petitioner's application the hearing of the suit was adjourned to enable her to file a petition for divorce on the ground of desertion.

In *Barnes* v. *Irwell Valley Water Board* (page 394 of this issue) the Court of Appeal (GREER, SLESSER and MACKINNON, L.JJ.) affirmed a decision given at Manchester Assizes by The Hon. S. O. HENN COLLINS, K.C., Commissioner of Assize (as he then was), who had awarded damages to the respondents in respect of lead poisoning contracted by drinking "plumbo-solvent" water. It was intimated that while there had been no breach of the appellants' statutory duty to supply pure water they had been negligent in not warning consumers that the water remaining for some time in lead pipes might become impregnated with lead to a dangerous extent, or otherwise taking steps to obviate the danger.

In *Beresford* v. *Royal Insurance Co., Ltd.* (*The Times*, 10th May), the House upheld a decision of the Court of Appeal [1937] 2 K.B. 197; 81 SOL. J. 338, to the effect that the administratrix of a deceased person who committed *felo de se* was not entitled to moneys arising of policies taken out by the deceased on his life. In the events the moneys were payable under the contract but the court would not allow one guilty of the said crime, or his representative, to reap by the judgment of the court the fruits of his crime.

In *Bailey and Another* v. *Howard* (*The Times*, 10th May), CHARLES, J., entered judgment for the plaintiff claiming as administrator for loss of expectation of life of his daughter, aged three, who was killed in a motor accident, for £1,000, and in respect of the injuries sustained by another child, who had substantially recovered, for £350. These were the amounts assessed by the jury, but the learned judge said that he thought the damages were very excessive and granted a stay of execution with a view to appeal.

In *Avery* v. *London and North Eastern Rly. Co.*; *Same* v. *Same*; *Harris* v. *Same*; *Same* v. *Same*; *Bonner* v. *Same*; *Same* v. *Same*; *Watson* v. *Same*; *Same* v. *Same* (*The Times*, 10th May), claims arising out of a railway accident occasioned by the negligent driving of two light engines by the respondents' servants, the House of Lords reversed decisions of the Court of Appeal and held that in claims by dependants under the Employers' Liability Act, 1880, and the Workmen's Compensation Act, 1925, the county court judge was right, in awarding compensation, in declining to take into consideration that there were other dependants who were not in fact claiming in the actions. A judge might adjourn proceedings for further inquiries, but his jurisdiction was confined to assessing damages for the people before him, and the Court of Appeal was wrong in holding that no one member was to get more compensation than he would have got if compensation were being assessed for all.

In *Re the Benefice of St. Bartholomew, Islington, and St. Stephen, Islington* (*The Times*, 10th May), the Judicial Committee of the Privy Council dismissed a petition by the church council and parishioners of St. Bartholomew's Church, Islington, against a scheme proposed by the Ecclesiastical Commissioners under the Union of Benefices Measure, 1923, for the union of the benefice and that of St. Stephen's, Islington. The scheme involved the demolition of the first-named church and the Board intimated that no sufficient reason had been shown why the scheme should not be affirmed.

In *Square* v. *Model Farm Dairies* (*Bournemouth*), *Ltd.*; *Square and Others* v. *Same* (*The Times*, 11th May), LEWIS, J., held that a householder and members of his household were entitled to damages on the ground that the supply by the defendants of infected milk, which was the cause of their illness, amounted to a breach of the defendants' statutory obligation under s. 2 (1) of the Food and Drugs (Adulteration) Act, 1928, notwithstanding that the presence of the bacillus in the milk was entirely unknown to the defendants, that they could not have known of its existence, and that they were entirely innocent morally.

In *Rex* v. *Triffitt* (*The Times*, 11th May), the Court of Criminal Appeal (BRANSON, HUMPHREYS and DU PARCQ, JJ.) quashed the appellant's conviction as an habitual criminal, where the deputy-chairman of quarter sessions discharged jurors in waiting in court before promulgation of sentence on the substantive charge of house-breaking (to which the appellant had pleaded guilty), and directed that the trial on the charge of being an habitual criminal should take place on the following day before another court and an entirely fresh jury. The court intimated that it is impossible to split an indictment. See *Rex* v. *Hunter*, 15 Cr. App. Rep. 69; *Rex* v. *Coney*, 17 Cr. App. Rep. 128.

In *Rex* v. *Collins* (*The Times*, 11th May), the Court of Criminal Appeal (BRANSON, HUMPHREYS and DU PARCQ, JJ.) quashed the appellant's conviction at Chester County Sessions of pavilion-breaking on the ground that the summing-up was inadequate. The chairman reminded the jury that the appellant had pleaded "Guilty" before the magistrates, but not that he had pleaded "Not Guilty" before quarter sessions.

Town and Country Planning Act, 1932.

PROTECTION FOR EXISTING USES AND USES OF THE SAME OR OF A SIMILAR CHARACTER.

Under s. 13 of the Town and Country Planning Act, 1932, a planning authority can prohibit the use of buildings in their area for any purpose contrary to the use permitted by the scheme. Where, however, a building was being used for a contrary purpose before the coming into effect of the resolution to prepare a scheme, or has been permitted under an interim development order, and such use has not been discontinued over any one period of eighteen months since, the planning authority must pay compensation where it is intended to prohibit the non-conforming use.

This is an important provision for the protection of persons and interests who might otherwise be placed in an exceedingly difficult position by the coming into operation of a scheme otherwise beneficial to the neighbourhood generally. The purpose of the provision is to meet in advance the objections which such persons and interests would be compelled to raise where no protection is accorded them.

Unfortunately, in its operation, there is at the moment some lack of clarity. The question which frequently arises is the following—a factory adapted for one industry ceases to be used for that particular purpose and when re-let the new occupants desire to carry on some different industry. When their plans as to the installation of new machinery are submitted to the local authority the difficulty arises. Some local authorities take up the attitude that not only is bye-law consent necessary but also interim development consent in the light of the non-conforming user. This attitude is based on the definition of interim development given in s. 10 as amplified by the definition of development given in s. 53, which includes "any use . . . different from the purpose for which the land or building was last used." If change of user is constituted by such alteration from a factory of one character to a factory of another character, then interim development consent is essential.

Some light is thrown on the problem by the definition of existing use given in s. 53 where it is defined as "use . . . for any purpose of the same or a similar character to that for which it was last used . . ." The section goes on thereafter to include any use permitted by or under an interim development order; and concludes with the proviso as to destruction of the existing use where there has been eighteen months discontinuance of the user. It would seem that the material words are "of the same or a similar character." Where the same industry is going to be carried on no question can arise. If the same industry is not to be carried on, then the question is, what industries are of a similar character? Can the meaning be widened to include all industries?

On the latter basis one is entitled to look at proviso (*b*) to s. 10 (3). There the planning authority is specifically restrained from refusing consent to a similar user unless such use would be of a noxious or offensive character. Such would seem to suggest that the wording is sufficiently wide to include as similar all users which could be included in a use zone in which the non-conforming use would be permitted. Against this, however, it can be argued that use "zoning" has nothing to do with the Act. It is merely a term of art employed by the planning authority for the purposes of their scheme. In support of such argument s. 12 (1) (*d*) can be cited to the effect that the authority are empowered to impose restrictions "upon the manner in which buildings may be used" and that the manner of the imposition of those restrictions is not material in determining to what extent the authority are empowered to impose restrictions.

What is to be searched for is, what restrictions are there in the Act upon the planning authority's powers to impose restrictions upon the use of buildings? The power to enforce and carry into effect schemes is contained in s. 13. By this section the authority is empowered to prohibit any use which contravenes the scheme; and any contrary user after the scheme comes into operation is to be dealt with as a summary offence. The prohibition, however, is subject to the payment of compensation under s. 18, a payment which cannot be avoided under s. 19 unless existing users are excluded from such prohibition.

In effect there is no restriction upon the planning authority's power under s. 12 (1) (*d*) to impose restrictions upon the manner in which buildings may be used, provided that compensation is paid where an existing use is prohibited. All of which leads back to the definition contained in s. 53 and the meaning of the words "any purpose of the same or a similar character." Do the words "of the same . . . character" mean an identical use? Supposing the question related not to factories but to shops. Could it be argued that confectioner's and tobacconist's shops are to be regarded as of the same character, and that, say, a milliner's shop with a workroom attached is of a similar character? Or must it be accepted that the only use having the same character as a confectioner's shop is another confectioner's shop? Surely something of the same character is wider than something identical and that something similar is wider still.

On this point the attitude of many local authorities to proviso (1) of s. 53 is instructive. The proviso states that, where an existing use is discontinued for eighteen months, no use at a subsequent date can be deemed to be an existing use. The attitude taken up by many authorities is that, where premises are unlet for a period of eighteen months, the existing user has been discontinued. A shop is not a shop, apparently, if it is unoccupied. It may be that such is the proper interpretation. On the other hand, if a house remained unlet for eighteen months, it is more likely to be evidence of the landlord's inability to secure a tenant than of his intention to discontinue its user as a dwelling-house.

Surely positive evidence of abandonment of user is required. Or, at any rate, surely the landlord is entitled to rebut any inference of abandonment which may be drawn from the fact that his premises have remained unlet over a period of eighteen months. It may be answered that the user must be regarded as discontinued where there is no person using. It can be argued, however, that there is a considerable distinction between the user of the occupier and the user of the landlord. The use of the landlord is the use of the fruits of a letting and his use continues so long as he lets or offers his premises for letting. He cannot be said to have changed his use until his offer to let is extended to a different class of persons. His use is not personal to himself. He is content to take the fruits of another's use. That he is prepared to forego all fruits that he may obtain the fruits of a certain character is something which may be argued from the evidence of unlet premises as easily as it may be argued that use for a particular purpose has been abandoned.

The instruction to be drawn from the interpretation shown above is that most local authorities regard the Act in its narrowest sense and interpret it accordingly. On the other hand, there is a fair weight of argument which might be employed in supporting a wider interpretation.

For the moment, however, it would be bold indeed to give counsel with certainty upon what constitutes, or what does not constitute change or discontinuance of an existing user.

In the Professional Examinations of the Auctioneers' and Estate Agents' Institute, held in March last, Mr. A. F. King, Exeter, was placed first in the final, and Mr. J. L. Docksey, Bradford, was first in the intermediate, each obtaining the Institute prize in the respective examinations. The total number of candidates examined was 593, of which number 296 passed, being a percentage of 49·9.

The Shooting of Rooks.

In *Noble* v. *Phillips*, recently heard at Retford County Court, a claim was made for an injunction to restrain the shooting of rooks. The plaintiff owned the Mount Vernon Nursing Home, in the grounds of which a rookery had existed for forty years. The defendant was a neighbour, and he had complained about the rooks, on the ground that they did much damage and were a grave nuisance. Having expressed his intention of getting rid of the rooks, the defendant had fired three shots, which had killed four birds. Some of the shot had hit a window of a maternity ward, causing alarm to a patient. His Honour Judge Hildyard, K.C., observed that it would be wrong to shoot rooks in the nesting season, and an injunction was granted, pending the trial of an action for damages.

At the trial the plaintiff's case was that the rookery was 8 or 10 feet inside the boundary, and the defendant had committed a trespass in shooting over her land. The defendant contended that the rookery was not the property of the plaintiff, and she had suffered no damage. The damage had been done to the defendant's property, e.g., by the dropping of twigs and the disfigurement of windows. It was therefore justifiable to take steps to abate the nuisance, and, as the rooks were vermin, they could be shot—even over the land of another person. Their numbers had been reduced to reasonable dimensions (i.e., about a dozen) by the firing of seven shots on three different days. No shots had been fired in the direction of the plaintiff's house. Judgment was given for the plaintiff for 5s. damages, and the injunction was made perpetual respecting boundaries to be agreed.

The leading case on this subject is *Hannam* v. *Mockett* (1824), 4 Dow. & Ry. 518. The plaintiff claimed £200 as damages for disturbance of a rookery, by the firing of guns loaded with gunpowder. The alleged result was to scare away about 1,000 rooks, whereby the plaintiff lost the satisfaction and delight of the rookery, also the profits and advantages from killing and taking the rooks and their young. The defence was that the rooks were animals *ferae naturae* in which no man could acquire any legal property. A verdict was found for the plaintiff for £10 damages, but, on a motion in arrest of judgment, it was pointed out that, by the statutes 24 Hen. 8, c. 10 and 8 Eliz., c. 15, certain measures were adopted which had in view the destruction of rooks as vermin, and not their protection as property. Although these statutes had expired, they were useful as showing that rooks were undeserving the protection of the law. The judgment of the Court of King's Bench was given by Bayley, J., who concluded as follows: "Upon the ground, therefore, that rooks are animals in which a man has no property, and has no right to insist that they shall come to the neighbourhood where he is; that they are birds *ferae naturae*, destructive in their habits, and a nuisance to the neighbourhood where they are, and because they have no protection from any Act of Parliament, we are of opinion that the plaintiff is not entitled to maintain this action, and consequently the judgment must be arrested." The appeal was therefore allowed and judgment was given for the defendant.

The court rejected the argument that rooks were beneficial to the public, as being a useful article of food. It appeared that the habit of eating young rooks was by no means properly or universally adopted. The keeping of a rookery was compared unfavourably with the keeping of a dove-cot. Even for the latter purpose a royal grant or licence was required (in the absence of a custom or prescriptive right) although doves were less destructive than rooks. No comparison was also held to exist between a rookery and an apiary or a private fishery. Bees were held to be on the same footing as tame pigeons, i.e., domestic creatures which might be the subject of larceny. Even wild fowl, however, might form the subject of a successful action, but only if protected by statute. Although rooks are not within this category, it appears from *Noble* v. *Phillips*, *supra*, that anti-rook measures must only be taken within one's own boundary.

Company Law and Practice.

The Payment by a Company of Brokerage and Commissions.

The payment by a company of sums by way of commission in consideration for persons subscribing or agreeing to subscribe for shares in the company or procuring or agreeing to procure subscriptions is now regulated by s. 43 of the Companies Act, 1929. The payment of brokerage in the ordinary sense of the word, by which I mean a commission for placing shares as opposed to a consideration for doing any of the other things enumerated above, was always legitimate, and the power of the company to pay brokerage was not circumscribed or affected by statute. It was not even necessary to look to see whether such payment was in terms authorised by the company's memorandum of association. This point was before the Court of Appeal in *Metropolitan Coal Consumers' Association* v. *Scrimgeour* [1895] 2 Q.B. 604, when it was argued that the payment of a commission to brokers for placing shares offended against the then existing statutory provisions prohibiting the issue of shares at a discount. This argument was characterised by Lindley, L.J., as an attempt to push some sensible and well-recognised doctrines of the court to an absurdity. The payment was the everyday remuneration which is given to stockbrokers for their services in procuring people to take shares. It is no doubt possible so to manipulate such transactions as to lead to an issue at a discount, but that is a problem which the court will investigate and deal with when it arises in a particular case. The mere possibility is not enough to render all such transactions illegal. Pushed to its logical conclusion the doctrine would involve the proposition that all moneys paid to newspapers for advertisements would be illegally paid and recoverable. This startling proposition is, however, fortunately not the law. The law can be re-stated in the words of Lopes, L.J., in his judgment in *Metropolitan Coal Consumers' Association* v. *Scrimgeour*, *supra*, at p. 609: " . . . in any case where it is made out that the services of the broker are reasonably necessary, that the brokers are properly employed in the issue of the capital of the company, and that the payment of a commission of so much per share is a fair and just payment for services rendered, there is no ground, either of reason, of justice or of principle, why the payment should not be held to be *intra vires* and unimpeachable." The alternative view that any expenditure incurred by a company in getting its capital placed was necessarily wrong therefore stood condemned, and in order to attack any such expenditure it was necessary to show that it was not incurred in the regular way or did not pass the tests laid down by Lopes, L.J.

We now pass on five years from the date of *Metropolitan Coal Consumers' Association* v. *Scrimgeour*, *supra*, and come to the Companies Act of 1900. In that Act we find the first authorisation for payment of commissions for subscribing or procuring subscriptions. Certain conditions had to be complied with, but these need not detain us as the law on this point has been re-enacted and extended by s. 43 of the present Act, which we shall have to consider. Suffice it to say that the Act of 1900 is a landmark inasmuch as prior to the passing of that Act it was doubtful whether commissions other than brokerage strictly so-called could be paid by a limited company. At any rate, any such payment out of capital would probably have fallen within the decision of the House of Lords in *The Ooregum Gold Mining Company of India, Ltd.* v. *Roper* [1892] A.C. 125, and so have been *ultra vires*. The same tribunal had shortly after the passing of the

Act of 1900 to consider the effect of the alteration in the law effected by that statute. I refer to the case of *Hilder* v. *Dexter* [1902] A.C. 474. In that case a company which was in need of working capital offered shares to certain persons who agreed to take them at par, one term of the agreement being that the subscribers should have options to take up further shares also at par within a certain time. Before the time limited for the exercise of the option had expired the market price of the shares rose to a premium and thereupon the subscribers claimed to have the further shares allotted to them at par in pursuance of the option agreement. Their right was contested on the ground that the whole transaction was merely a device for paying a commission out of capital in circumstances in which it was prohibited from doing so by the new clause of the Act of 1900. Now although the market price of the shares was higher than the par value at which the subscribers claimed the right to have them allotted, an allotment at par did not constitute an allotment at a discount: per Lord Davey, at p. 480. Nor was it in the opinion of the same noble and learned lord a commission paid by the company, since the company did not part with any of its moneys. The argument was that the company "by engaging to allot shares at par to the shareholder at a future date, is applying or using its shares in such a manner as to give him a possible benefit at the expense of the company in this sense, that it foregoes the chance of issuing them at a premium." It must not be forgotten, however, that the obligation to issue the shares at par was part of the earlier agreement, whereby the shareholders originally agreed to become members of the company, and was part of the consideration for that agreement. In any case, the argument failed in the absence of authority for the proposition that a company is obliged to issue its shares at a premium if other shares of the same class are issued and stand at a premium in the market.

We now come to the Act of 1929. Sub-section (3) of s. 43 of that Act provides that nothing in that section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay. This refers to payments such as those under consideration in *Metropolitan Coal Consumers' Association* v. *Scrimgeour, supra*. Sub-section (1) authorises a company to pay commissions to any person in consideration of his doing any of the things which I mentioned in the first sentence of this article, if—then follow four provisoes which must be observed before the company may properly act under the section:—

(*a*) the payment of the commission is authorised by the articles; and

(*b*) the commission paid or agreed to be paid does not exceed 10 per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and

(*c*) the amount or rate per cent. of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice not being a prospectus inviting subscriptions for the shares is issued, also disclosed in that circular or notice; and

(*d*) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

Failure in complying with these provisions relating to the delivery to the registrar of companies of statements in the form prescribed involves the company and every officer of the company who is in default in liability to a fine not exceeding £25.

The provisoes are strictly construed. Thus proviso (*a*) requires authorisation for a payment of a commission in the articles. In *In re Republic of Bolivia Exploration Syndicate, Ltd.* [1914] 1 Ch. 139, the memorandum of the company included among the objects of the company power to remunerate any parties for services rendered or to be rendered in placing or assisting to place any shares in the company's capital. There were no special articles, so that the then existing Table A applied. That Table A did not authorise the payment of commissions, and in spite of the express power to that effect contained in the memorandum, it was held that the company could not pay commissions without offending against the statutory provision which then corresponded to s. 43 (1) (*a*) of the present Act. Another case under a previous similar section is *Barrow* v. *Paringa Mines* (1909), *Ltd.* [1909] 2 Ch. 658. In that case a somewhat complicated scheme was agreed upon on the re-organisation of the company, and the court was, in effect, asked to determine whether that agreement constituted an agreement for underwriting shares in a new company which was being formed to take over the assets of the company. Put shortly, the scheme was this: The old company was selling its assets to the new company for the issue of 400,000 shares of 5s. each, on which 3s. 6d. was to be deemed to be paid up. Certain persons (called contractors) agreed that if the shareholders of the old company refused to take up the 400,000 shares and the liquidator of the old company was unable to sell them, they would themselves become responsible for the amount of capital unpaid. The contractors were to get a commission of 10 per cent. The articles of the company authorised payments of that kind up to but not exceeding 25 per cent. It was held that the agreement was a valid underwriting agreement, and accordingly the commissions paid were unimpeachable.

It will be observed that in the case last cited the articles allowed payment of commissions up to 25 per cent. The limit of 10 per cent. imposed by the Act of 1929 is new, but, as against this, it must not be forgotten that under that Act for the first time a company also has power to issue shares at a discount. Proviso (*d*) to sub-s. (1) is also new, but does not appear to call for any comment.

A Conveyancer's Diary.

Revocation of Wills by Non-Testamentary Document duly Executed.

A RECENT case which is noted in last week's issue of this Journal, *Re Spracklan's Estate* (1938) 82 SOL. J. 373, calls attention to the various methods of revoking a will. Section 20 of the Wills Act, 1837, contains the statutory provisions on the subject. The section enacts as follows:—

"No will or codicil or any part thereof shall be revoked otherwise than as aforesaid or by another will or codicil executed in manner hereinbefore required or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same."

The expression "otherwise than as aforesaid" refers to s. 18, which provides for revocation by marriage.

In *Re Spracklan's Estate* a testatrix had made a will appointing one D her sole executor and residuary legatee and deposited it with her bank manager. Shortly before she died, and while she was gravely ill, she dictated to one H a document which she and H and his wife signed in the presence of one another. The document was addressed to the bank manager and stated "I (H) have undertaken to pay all debts

. . . and (the testatrix) wishes me to do this for her sake and will you please destroy the will already made out."

The registrar held that the will was not revoked. No doubt the registrar in giving that decision was looking upon the document as being nothing more than a direction to the bank manager to destroy the will. That would not have been a sufficient revocation, because the destruction would not have taken place in the presence of the testatrix; see *In the Goods of Dadds* (1857), where probate was granted of the draft of a codicil which had been burnt by the testatrix's direction with the intent to revoke it, but not in her presence.

On appeal the decision of the registrar was reversed on the ground that the letter addressed to the bank manager was a "writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed."

In his judgment Sir Wilfrid Greene, M.R., relied upon the decision in *In the Goods of Durance* (1872), L.R. 2 P. & D. 406.

In that case a testator wrote a memorandum as follows: "I Thomas John Durance authorise Mr. Denman of the firm of Messrs. Mee, Denman & Co. Solicitors of Retford in the County of Nottingham to deliver up in full to my brother Mr. Joseph Durance of —— the will completed by me at his residence on Tuesday evening the 14th of March last together with the copy of the will of my late grandfather Mr. Joseph Durance Senior." This document was signed by the testator and two witnesses. Then the testator wrote to his brother: "Enclosed I hand you an order to get my will from Mr. Denman which please burn as soon as you receive it without reading it . . . " This was also signed by the testator and two witnesses.

It was held that there was a good revocation and administration was granted with the letter annexed. The annexation was directed because the letter contained at the end some testamentary dispositions which I have not thought it relevant to repeat.

It is clear that the document revoking the will need not be testamentary provided it is executed as required for a will.

In the Goods of T. H. Gosling (1886), 11 P.D. 79, a testator had obliterated the whole of a codicil, including his signature, by thick black marks and at the foot of it had written the words signed by himself and two witnesses, "We are witnesses of the erasure of the above." It was held that there was a good revocation of the codicil. Butt, J., said: "The intention of the testator is so manifest and the writing, though it does not come up quite to the letter of the statute, is so clearly within its intention that I grant the application and exclude the first codicil from probate."

In *Toomer* v. *Sobinska* [1907] P. 106, a testatrix signed a document which read as follows: "I Isabella Hudson Toomer do hereby declare that the will I have made and which is not in my possession and which consequently I am unable to destroy at this moment, is null and void and it is my intention to express my wishes in a will to be prepared and executed shortly." This was signed by the testatrix and there was written at the foot: "Signed by the above-named Isabella Hudson Toomer as and for revocation of her will in the presence of us both," followed by the signatures of two witnesses.

It was held that there was a good revocation, and as to the form of the grant that it should go as upon intestacy without annexing the paper writing, but with a note that the grant was made in consequence of the execution of the document (referring to it by date) revoking the will.

It will be observed that the testatrix in that case expressed her intention of making another will which apparently she did not do. Had the document stated that the testatrix had made some other testamentary disposition and had in fact done so, but for some reason such other disposition proved to be ineffective for want of due execution or otherwise, then the doctrine of "dependant relative revocation" would have to be considered.

That doctrine may be stated as follows: "Where the act of destruction is connected with the making of another will, so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of the new disposition intended to be substituted—such will be the legal effect of the transaction; and, therefore, if the will intended to be substituted is inoperative from defect of attestation, or any other cause, the revocation fails also, and the original will remains in force." (See "Jarman on Wills," 7th ed., Vol. 2, p. 135.)

The doctrine has also been held to apply where it is proved that the will is destroyed or otherwise revoked with the intention of substituting another will, if no new will is in fact made. That extension of the doctrine might seem to have applied in *Toomer* v. *Sobinska*. It seems, however, that the doctrine will only apply in such a case where the court is satisfied on the evidence that the revocation was intended to be conditional upon the execution of another will. Thus in *Dixon* v. *The Solicitor to the Treasury* [1905] P. 42, where a testator had mutilated his will by cutting off his signature and erasing parts of the document, it was left to the jury to decide whether the testator cut his signature off with the intention of revoking the will or with the intention that the will should be revoked conditionally on his executing a fresh will. The jury found that the testator's intention was to revoke the will conditionally upon his executing a fresh will. Upon that finding the court pronounced for the will.

Landlord and Tenant Notebook.

Estoppel and Third Parties.

It is a commonplace that a grantee of a lease cannot be heard to dispute the title of the grantor, and numerous examples of tenancies "by estoppel" can be produced at a moment's notice. But the position of parties other than the two mentioned is less adequately illustrated by reported decisions.

A fairly straightforward case is *Cuthbertson* v. *Irving* (1859), 4 H. & N., affirmed 6 H. & N. 135, in which the claim was for dilapidations at the end of a lease. The plaintiff had purchased the reversion, or what purported to be a reversion, during the term, and now found himself faced with a plea that the vendor who had granted the lease had had no power to do so, as he had previously mortgaged the property. The argument was that the plaintiff did not come within the scope of the famous statute 32 Hy. VIII c. 34. The commonsense view was, of course, that this did not concern the defendant, and on a review of the authorities it was held that as the defect did not appear on the face of the lease, the plea was untenable.

In the same year the position of an assignee of a term created by attornment was investigated in *Jolly* v. *Arbuthnot* (1859), 4 De G. & J. 224. The attorning party was a mortgagee, who attorned to a receiver, and by a deed he undertook to pay a rent of £3,500 a year, which was to be applied towards reduction of principal and payment of interest. A power of distress was expressly conferred. The receiver was to be agent for both parties. The mortgagor having become bankrupt, the receiver levied a distress a few days later, and the dispute was between him and the assignees in bankruptcy. The latter claimed the proceeds on the ground that the receiver had no reversion, there being no true tenancy; but it was held that although there was an intention to secure payment of a debt, there was also an intention to create a proper tenancy; the arrangement was unobjectionable and the right of distress was valid.

But circumstances in which a third party is not affected by the estoppel were illustrated by *Tadman* v. *Henman* [1893] 2 Q.B. 168, an action for conversion of goods by way of

illegal distress. The facts were that certain buildings and land, vested in the Bishop of London by a conveyance under which the premises and all buildings to be used for ever as a school, had ceased to be so used. Possession was enjoyed and general control exercised by the vicar of the parish in which the premises were situated. He let what had been the playground to an undertaker, the plaintiff's husband, who stored a hearse and carriage there. During the term the plaintiff bought (with her own money) the stock-in-trade and carried on the business in her own name. Her husband permitted her to keep the vehicles where they had been kept.

Over a year's rent being in arrear, the vicar distrained on the property in question. The plaintiff brought the action against him, and succeeded. Charles, J., held that the plaintiff's husband would be estopped from disputing the defendant's title, but that the estoppel did not extend to her.

Two ejectment cases considered in the course of the judgment were *Doe d. Knight* v. *Smythe* (1815), 4 M. & S. 347, and *Doe d. Johnson* v. *Baytup* (1835), 3 A. & E. 188. In the former, the grantee of a tenancy gave up possession to a third party who claimed to come in as defendant and landlord, but was not allowed to do so; for a tenant cannot put another party in possession. In *Doe* v. *Baytup* the daughter of a deceased tenant obtained, in circumstances amounting to fraud, the keys of the premises from her step-mother, who had given up occupation. It was held that she was estopped from disputing the landlord's title, being under an obligation to give up possession to the party who had conferred it upon her, who was the tenant. But the estoppel would not, of course, prevent her from bringing an action on the strength of any title which she might have.

Charles, J., distinguished these cases, holding that the plaintiff, Mrs. Tadman, never had any possession to give up. She kept certain goods on premises let or purported to be let to her husband, but she claimed no interest in those premises, and this left her free to dispute the validity of the tenancy. The distinction is indeed rather a fine one, but the decision might conceivably be supported in another way. That is to say, it might be pointed out that the law of distress is essentially adjective law, dealing with remedies rather than with substantive rights; hence, a party privy to an estoppel, though he cannot be heard any more than the person estopped, to say that the party who gave the latter possession has no title, may yet have a shield among his equipment, which that of the person estopped does not contain. It may well be that when A, having no title to particular property, purports to let it to B, and B actually sub-lets it to C, then A's rights against B affect C, but the method of enforcing them are outside the orbit of the privity. Thus A could sue B for rent, and if he re-entered under a proviso, C would have to give up possession, his claim to which is derived from B; but if A sought to levy distress on C's chattels for rent owed by B, C could be heard to say that the conditions precedent to the use of that remedy were not fulfilled.

Our County Court Letter.

THE DEFINITION OF AN AGRICULTURAL HOLDING.

In *Marriott* v. *Drury*, recently heard at Alfreton County Court, the claim was for possession of a field and £6 18s. 3d. mesne profits. The counter-claim was for £20 for loss of use of the field and damage thereto. The plaintiff's case was that the field was included in the tenancy of an inn, of which he was the licensee. The rental was £30 a year, and it was let to the defendant (a farmer) on condition that the plaintiff was to have the use of the field for the annual wakes, hospital demonstration and football matches. Nevertheless, the defendant had chained up the entrance to the land, and, on one occasion, he stopped a football match owing to the damage to the grass caused by spectators. The defendant's case was that the field was an agricultural holding, and he was therefore entitled to twelve months' notice to quit. It was pointed out for the plaintiff that, as he was only the tenant of a brewery company (and not the owner of the field) he could not grant a tenancy under the Agricultural Holdings Act. His Honour Judge Longson held that the land was not an agricultural holding. The defendant, however, was entitled to six months' notice, and the notice actually given was therefore bad. Judgment was given for the defendant on the claim, and on the counter-claim for £9 and costs.

ILLEGAL DISTRESS ON FARM.

In *Muxlow* v. *Newton*, recently heard at Horncastle County Court, the claim was for £50 as damages for illegal distress. The plaintiff's case was that in June, 1937, he became tenant of a farm, under a verbal agreement, at a rent of £30 a year, after the first year, i.e., the first year was to be rent free. In October, however, the defendant distrained. An auctioneer gave evidence that the farm must have been in a bad state in June, 1937, and he had known cases of farms being let rent free for the first year. In an ordinary state, a fair rent for the farm would be £55 a year, but, in its present state, £41 would be fair. If no dilapidations were allowed for, £30 would be reasonable over a period of years. The defendant's case was that the farm was let on the same terms as the previous tenancy, viz., £98 a year, less £20 in the first year for repairs. An auctioneer stated that £100 would be a fair rent for the house and farm. Arable land was sometimes let rent free for the first year, but he had never known of this being done with grass land. His Honour Judge Langman held that the farm was not taken on the same terms as the previous tenancy. Judgment was given for the plaintiff for £7 and costs.

PAWNBROKER'S RIGHTS AND LIABILITIES.

In *Forster* v. *Fieldsend*, recently heard at Chesterfield County Court, the claim was for £3 17s. 6d. as the value of a suit, and the counter-claim was for 18s. 6d. as the amount of a loan and interest. The plaintiff's case was that in March, 1937, he was sentenced to six months' imprisonment. In his absence the suit was pawned by his mistress, without his authority. The defendant's case was that the woman was looked upon as the wife of the plaintiff, in the district where they lived, and she had a general authority to act for him in his enforced absence. Corroborative evidence was given by the woman, who stated that she was told by the plaintiff, when he went to prison, to do the best she could for herself and the child of the union. Her association with the plaintiff had since ceased, and she had married someone else. His Honour Judge Longson gave judgment for the plaintiff on the claim and counter-claim, with costs.

THE QUALITY OF SEEDS.

In *Eley* v. *Till*, recently heard at Cirencester County Court, the claim was for £9 as the price of 3 cwt. of clover seed, and the counter-claim was for £48 as damages for breach of contract, viz., supplying seed of inferior quality, whereby the defendant had lost a crop of 24 acres. The defendant's case was that, having seen a sample early in 1936, he agreed to pay £3 a cwt. for 3 cwts. of seed. This was sown at the end of April, 1937, but there was no germination by July, and the plaintiff was notified that the 24 acres were barren. The seed was sown on dry ground, which had produced a good crop of wheat the previous year. The plaintiff's case was that the seed came from a rick which was harvested, in splendid condition, in 1935, and was threshed in 1936. Nine other farmers had been supplied with seed from the same rick, but the defendant was the only one who had not had satisfactory results. One farmer had a crop of 2 tons to

the acre on 27 acres, and corroborative evidence, as to the good quality of the seed, was given by the threshing contractor. A crop might fail, however, by reason of bad weather, sowing too deeply or to shallow, or clover sickness. His Honour Judge Kennedy, K.C., gave judgment for the plaintiff on the claim and counter-claim, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

INCAPACITY FROM PAIN.

In *Jewell* v. *Walsall Wood Colliery Co., Ltd.*, at Walsall County Court, the applicant's case was that he had been injured by a fall of rock on the 14th September, 1934. He returned to light work on the belt in January, 1936, but was unable to carry on after January, 1937. Compensation for total incapacity had been paid at £1 3s. 5d. a week until January, 1936, and for partial incapacity at 7s. 5d. a week during the year on light work. The applicant claimed that he was still totally incapacitated, and entitled to an award on that basis. The respondents' medical evidence was that in June, 1937, and in January, 1938, the applicant was fit for light work. The origin of the pain was apprehension about the applicant's physical condition, as he had a groundless fear that his heart was affected. Although radiographs showed some calcification, this was often found in manual workers, and would not account for the pain. The applicant's condition was psychological, and it was a mistake for the applicant to rest, instead of remaining at work, and shaking off his condition. His Honour Deputy Judge Dawson Sadler held that the applicant had remained at work until his condition made it impossible for him to continue. Although the power of suggestion might sometimes operate a cure, it was useless in other cases. An award was therefore made of £1 3s. 5d. a week on the basis of total incapacity, with costs.

DEATH OF TRAVELLING SALESMAN.

In *Hancock and Others* v. *The Operating and Vending Machine Co. Ltd.*, at Nottingham County Court, an award was claimed of £300 for the widow, £145 for the elder child, and £155 for the younger child of a deceased travelling salesman. The duties of the latter were to sell automatic machines, for which purpose a motor-van was provided. The deceased was paid by salary and commission, and, on the day of his death, he had been in Mansfield at 6.30 p.m., when he changed 10s. worth of coppers into silver at a public-house. He there offered another man a lift back to Nottingham, but the two men went to two other public-houses and finally returned to the first, before leaving for Nottingham. They eventually left at 9.20 p.m., when the deceased was sober, but he had a fatal accident with another car on the journey home. The respondents' case was that the only business done by the deceased was the changing of copper into silver, for which purpose he need not have stayed in Mansfield so long. Even if he was not drunk, it was only necessary to prove that the deceased was committing a breach of the Road Traffic Acts to take his conduct out of the scope of his employment. His Honour Judge Hildyard, K.C., held that, although the deceased was not drunk, the accident could not be held to have arisen in the course of his employment. No award was made.

REDEMPTION OF WEEKLY PAYMENTS.

In *Smith and Marchant* v. *Webb*, at Wells County Court, the respondent had been in receipt of compensation at the rate of £1 5s. 5d. a week. Having become mentally defective, he was represented by his wife as guardian *ad litem*. Redemption had been agreed at a lump sum of £950 19s., and His Honour Judge Sir Gerald Hurst, K.C., made an award accordingly, with payment out of court of £15 to the wife, the balance in court to be invested.

To-day and Yesterday.

LEGAL CALENDAR.

9 MAY.—Lord Walsingham, who died at Merton on the 9th May, 1781, had retired from the office of Chief Justice of the Common Pleas less than a year before. It is strange that he should be so little remembered, for he was an accomplished lawyer whose vigorous mind triumphed over the most crippling effects of gout. Lord Eldon has left on record how he would come into court with both hands wrapped up in flannel and utterly unable to take a note, and how he could nevertheless try a case lasting nine or ten hours and then from memory sum up all the evidence correctly.

10 MAY.—On the 10th May, 1850, Walter Watts, a young clerk of the Globe Insurance Company, who had succeeded in plundering his employers of about £80,000, appeared at the Old Bailey. The defences raised on his behalf were ingenious, for it was argued that as he held two shares in the company he was in the position of a partner and could not steal his own property. The judges rejected this contention. It was also argued that a cheque for £1,400 which he had appropriated was not a "valuable security," but that point did not avail him, as the judges held that he could be found guilty of stealing "a piece of paper." He was in fact convicted and sentenced to ten years' transportation.

11 MAY.—On the 11th May, 1871, there opened the civil trial of the great *Titchborne Case* which lasted for ten months.

12 MAY.—On the 12th May, 1796, Robert Crossfield was acquitted of high treason at the Old Bailey. The rather picturesque form which his supposed crime assumed was that of procuring the manufacture of a poisoned arrow together with an instrument to shoot it at King George III. The imagination of the English was still focussed on the fantastic horrors of the French Revolution, and almost anything seemed possible in the way of conspiracy. Certainly, if he was not guilty of the crime charged, the testimony of several Englishmen taken to Brest when the "Pomona" with Crossfield on board was captured by the French, attributed to him a familiarity with the revolutionaries which gave colour to suspicions of his treasonable activities.

13 MAY.—On the 13th May, 1754, when Elizabeth Canning, convicted of wilful and corrupt perjury, was brought to the bar at the Old Bailey to receive sentence, her counsel made a last effort for her by producing affidavits from two of the jurymen to say that the verdict was given against their consciences. The foreman of the jury, called upon to explain the circumstances, threw a little light on the methods of the jury room, relating how the two gentlemen had wanted to find the girl "Guilty, but not wilful," and had only surrendered to the majority on condition that a recommendation to mercy should be made. Sentence was postponed for legal argument, but the verdict was afterwards confirmed and Elizabeth was transported.

14 MAY.—Sir William Bolland died on the 14th May, 1840, little more than a year after his retirement from the Court of Exchequer, where he had served for nine years. Towards the end of his judicial career, his infirmities had given rise to a noticeable nervousness. On the Bench he wore a habitually grave expression and was seldom seen to smile.

15 MAY.—Never till the 15th May, 1536, had a Queen of England been tried for a crime. On that day it was that Anne Boleyn stood charged with high treason before the Court of the Lord High Steward, consisting of the Duke of Norfolk and twenty-five peers. The sun shone brightly through the windows of the ancient banqueting hall of the Tower of London when the order was given: "Gentleman gaoler of the Tower, bring in your prisoner." Then the court rose, each man with bared head as, haughty and composed, the Queen came in.

THE WEEK'S PERSONALITY.

On the 11th May, 1871, there stepped on to the stage of English legal history one of the most extraordinary figures who have ever played a part there. It was to be nearly three years before the curtain was finally rung down on a performance of consummate skill, and even afterwards he continued to make a good deal of noise behind the scenes. His name was Arthur Orton, twelfth child of a Wapping butcher. He claimed to be the long-lost heir to the title and possessions of one of the great families of England. How this enormous, burly, illiterate imposter succeeded in convincing the mother of Roger Tichborne and a host of his former acquaintances that he was indeed the slight, delicate, under-sized youth who had been educated at a great school and held a cavalry commission, is still clouded by mystery. Certainly, in his own way, he had extraordinary talents which won praise from Sir John Coleridge, who first cross-examined him. "Did you ever see," he asked, "a more clever man, more ready, more astute or with more ability in dealing with information and making use of the slightest hint dropped by cross-examining counsel?" By the time he was sentenced to fourteen years' penal servitude, he had won enormous support from the half-educated masses and led his own counsel along a path which brought him to professional ruin. He died in obscurity in 1898.

SPEAKING FROM NOTES.

Mr. R. G. Menzies, the Attorney-General of Australia, who is in England again, is better known here than any other personality in the legal life of the Dominions. Himself among the best public speakers in the Empire, he recently expressed surprise at the prolific use of notes on the part of our orators on almost all occasions. In this respect the Bar sins less than most, though I believe the Parliamentary Bar has provided some notable exceptions to this immunity. Mr. Balfour Browne, K.C., in his reminiscences, related how his fellow silk, Mr. Pember, could hardly make a speech without voluminous notes carefully underlined even to such phrases as "It occurs to me to say." Of another leader, Mr. J. B. Aspinall, Recorder of Liverpool, who was also inordinately dependent on elaborate notes, he had a sad story of an occasion when "just before the time for the delivery of the oration he had to use his notes for quite another purpose and therefore came into the Committee plucked of all his feathers." His rhetorical flights were thus completely frustrated.

HOW FAR IMPROMPTU?

"I hardly ever hear an actual speech in London any more," Mr. Menzies is reported to have said, "I only hear things read aloud." Though he admitted that three or four headings on a slip of paper were a wise precaution, he considered that "words can only come to life when the speaker gives them birth at the moment with his brain." This judgment rules out speeches learnt by heart and digs a mine under the method of the late Sir Ernest Wild, who at the Bar used to write out the elaborate passages of his speeches beforehand. Before his great defence of Gardiner he was word perfect in his peroration to such an extent that he could literally repeat it in his sleep. Lady Wild has put on record how the night before he had to deliver it she awoke to find him standing in the middle of the room as though in court, going through it clearly and distinctly. I wonder how far Mr. Menzies approves the method employed by the younger Gracchus, who, when he made a speech, used to employ a skilful flute player to stand concealed close to him and by notes on the instrument regulate the proper pitch of his voice. Cicero observed that we might leave the flute player at home, but carry the lesson to the forum.

Major Richard Melsome Woolley has been elected President of the Auctioneers' and Estate Agents' Institute in succession to Mr. Hubert G. Alexander.

Practice Notes.

"ROLLED-UP PLEA OF FAIR COMMENT."

IN *Tudor-Hart* v. *British Union for the Abolition of Vivisection* (1937), 54 T.L.R. 154, in answer to a claim for damages for libel, the defendants pleaded fair comment upon a matter of public interest. They counterclaimed damages for libel, to which the plaintiff pleaded the "rolled-up plea of fair comment":

> "in so far as the said words complained of . . . are statements of fact they are true in substance and in fact, and in so far as they are expressions of opinion they are fair comment upon the said facts which are a matter of public interest."

The Union asked for further particulars of the facts and of the opinion: the Master declined to make the order. On appeal, du Parcq, J., ordered the particulars; the Court of Appeal restored the order of the Master.

In *Aga Khan* v. *The Times Publishing Company Limited* (1924), 1 K.B. 675, the Court of Appeal held that a defendant pleading the "rolled-up plea" cannot be ordered to deliver particulars specifying which of the words he relies on as statements of fact, and which as statements of opinion, this being a matter for the jury to decide; nor can he be ordered to give particulars of the facts upon which he relies as the basis of his comments, if the plea limits these facts (as here) to "the said facts," for the plaintiff is given all the information he can require.

Had the Court, however, been free, it would have been disposed to agree with Scrutton, L.J., in the *Aga Khan Case* (pp. 681–3). Logically, to say that the statements of facts are true is one defence, and that the expressions of opinion are fair comment is another; the two pleas are strictly separate. But since 1890, *Penrhyn* v. *Licensed Victuallers' Mirror*, 7 T.L.R. 1, the two pleas have been "rolled into" one and particulars are not ordered where the comment is alleged to be "on the said facts."

In *Digby* v. *Financial News Limited* (1907), 1 K.B. 502, 509, Lord Collins, M.R., described such a plea as one of fair comment merely, and not of justification; particulars there also were refused. In *Sutherland* v. *Stopes* [1925] A.C. 47, the House of Lords held that such a plea is not a plea partly of justification and partly of fair comment, but is a plea of fair comment only. See the exposition by Lord Shaw (at pp. 77, 78), and the remarks of Lord Carson (at p. 99):

> "That plea . . . has nothing whatever to do with a plea of justification. It is not partly justification and partly fair comment, but fair comment pure and simple . . . ."

See Fraser, "Libel and Slander" (1936), 7th ed., pp. 262-264; Odgers (1929), 6th ed., pp. 514–516:—

> ". . . the very name suggests that it is a combination of two quite different defences, justification and fair comment. It was never intended to serve such a purpose; it only purported to justify the facts in the libel upon which the comments were based, and justification to that extent was essential to every plea of fair comment."

See also Gatley, "Libel and Slander" (1929), 2nd ed., pp. 563–566; Halsbury, "Laws of England," 2nd ed., vol. II, tit., "Libel and Slander" (Lord Hewart and G. L. F. Bridgeman), pp. 498, 499 and 611.

DECIDING ON FACTS OF CASE.

SOMETIMES, by consent between the parties, the court is asked to come to a conclusion on the facts of a case as if certain facts of the case did not exist. Lord Wright recently declared such a basis as "false and artificial." This, it is true, was said of the procedure in an appeal before the House of Lords:—

> "It is the duty of this House," he observed, "to decide actual questions on the facts of the case which is brought before them. They ought not, whether the parties consent

or not, to deal with what is in truth a hypothetical question, that is, a question arising not on the true facts, but on an artificial and arbitrary selection of the facts." : *The Beaverford* v. *The Kafiristan* [1938] A.C. 136, 145 ; 81 Sol. J. 844.

This principle, it is submitted, applies equally to the trial of an action. In that case, the parties sought the decision of the House of Lords upon the question whether a salving ship might obtain a salvage award if she belonged to the same owners as the vessel which caused the damage. The parties had signed a Lloyd's salvage agreement ; this was an " essential fact " which could not, by consent, be disregarded, so that the question might be considered in the abstract, as if the agreement had not been signed. That salvage was claimable the agreement put the matter beyond doubt (at p. 153).

Obituary.

Sir COURTNEY TERRELL.

Sir Courtney Terrell, Chief Justice of Patna High Court, died at Middlesex Hospital on Saturday, 7th May, at the age of fifty-seven. He was called to the Bar by Gray's Inn in 1902. In 1928 he was appointed Chief Justice of Patna, and in the following year he received the honour of knighthood. He was a member of the Senate of Patna University.

Mr. E. CLAYTON, K.C.

Mr. Edward Clayton, K.C., of New Court, Carey Street, W.C., died at a nursing home in London, on Thursday, 5th May, in his eighty-second year. Mr. Clayton served his articles with Mr. James Boulton, solicitor, and in 1879 he was awarded the Clifford's Inn Prize. He joined Gray's Inn, however, and was called to the Bar in 1885. He was made a Bencher of his Inn in 1904, and he was treasurer in 1911. He took silk in 1909.

Mr. W. H. BELL.

Mr. William Henry Bell, solicitor, senior partner in the firm of Messrs. Bell, Pope & Bridgwater, of Woolston, Hants, died on Sunday, 1st May. Mr Bell was admitted a solicitor in 1889.

Mr. A. H. DIXON.

Mr. Albert Henry Dixon, solicitor, a member of the firm of Messrs. Dixons, Ward, Umney & Burdon, of Southampton Street, W.C., and of Richmond, Surrey, died at his home at Worthing, on Tuesday, 10th May, at the age of seventy-six. Mr. Dixon was admitted a solicitor in 1888.

Mr. C. P. JOHNSON.

Mr. Charles Plumtre Johnson, retired solicitor, of Lincoln's Inn, died at his home at Sevenoaks on Monday, 9th May, in his eighty-fifth year. Mr. Johnson was a son of the late Sir George Johnson, M.D., F.R.S., Physician Extraordinary to Queen Victoria. He was educated at Marlborough and at London University, and was admitted a solicitor in 1876. He was a director and had been chairman of the Law Fire Insurance Company, Limited, and he had also been a director of the Legal & General Assurance Company, Limited. He was chairman of the governors of Sevenoaks School, and was on the management committee of the Royal Eye Hospital and the Royal Dental Hospital. Mr. Johnson was a book-collector, and was the author of " Hints to Collectors of First Editions of Thackeray's Works " and " Hints to Collectors of First Editions of Dickens's Works." He was a keen yachtsman, and was a member of the Royal Yacht Squadron.

Mr. W. E. RALEY.

Mr. William Emsley Raley, J.P., solicitor, a member of the firm of Messrs. Raley & Sons, of Barnsley, died on Saturday, 7th May, at the age of seventy-nine. Mr. Raley, who was admitted a solicitor in 1881, was Clerk to Cudworth and Hoyland Nether Urban District Councils. He was a freeman of the Borough of Barnsley, and recently completed fifty years' service on the Barnsley Town Council. He was a member of the Burnham Committee and of the Executive of the National Association of Education Committees, of which he was a past president.

Reviews.

This Democracy. By Joseph Yahuda, LL.B., of the Inner Temple, Barrister-at-Law. With a Foreword by Viscount Cecil of Chelwood, P.C., K.C. 1937. Crown 8vo. pp. xvi and (with Index) 146. London : Sir Isaac Pitman & Sons, Limited. 5s. net.

To the author of this persuasive little book " race survival " is the primary object of political activity, the acceptance of " the principle of stewardship " the means of assuring this object and democracy or " administrative control by public opinion " the practical application of this principle. These are very comprehensive propositions. To define accurately their scope and to establish, in more than a popular sense, a *primâ facie* case for their validity would require a series of philosophic, economic and historical writings which in volume might well overtop the works of Aristotle or St. Thomas Aquinas. The author has achieved such skilful compression within the compass of less than 150 pages, that it is almost ungracious to point out the faults inherent in such an abridgement—too loose a definition of the terms employed and too free an assumption of matters not universally accepted. Perhaps in a fuller work he may contrast democracy as it is with democracy as it ought to be, showing by what flaw its two principal exponents have slid into plutocracy, bureaucracy and the mass mind and explaining the anomaly of finding the Moscow dictatorship lined up with " the peaceful democracies."

The Law of Housing and Planning. By John J. Clarke, M.A., F.S.S., of Gray's Inn and the Northern Circuit, Barrister-at-Law. Fourth Edition, 1937. Demy 8vo. pp. lvii and (with Index) 454. London : Sir Isaac Pitman & Sons, Ltd. 17s. 6d. net.

Since its first appearance six years ago, when the present Lord Justice Scott wrote an appreciative introduction, this valuable work has passed through three editions and it has now reached its fourth in an enlarged and remodelled condition. A fundamentally important subject is here reduced to order by the most systematic treatment and the most exact sub-division. The first part of the book is devoted to putting it into its proper perspective in relation to central and local government, while subsequent chapters trace its ramifications in the sphere of highways, traffic regulation and public health. Case law has not been allowed to dominate the method of treatment, and the limitation of citations, though making for simplicity, may somewhat reduce the value of the work for the specialist practitioner. On the other hand, the local government official will find it a guide of the highest possible utility. The appearance of the book might have been considerably enhanced by a somewhat less cramped form of printing.

Books Received.

The Shops Acts Simplified. By A. F. Bew, Barrister-at-Law. 1938. Crown 8vo. pp. (with Index) 95. London, Edinburgh and Glasgow : William Hodge & Co. Ltd. **2s. 6d. net.**

Notes of Cases.

Judicial Committee of the Privy Council.

Gaekwar Baroda State Railway *v.* Habib-ul-Haq and Others.

Lord Wright, Lord Romer, Sir Lancelot Sanderson, Sir Shadi Lal, and Sir George Rankin.
18th March, 1938.

INDIA — CONSTITUTIONAL LAW — PROCEDURE — SOVEREIGN PRINCE—CORPORATION OWNED BY SUED—STATUTORY RIGHT OF PRINCE NOT TO BE SUED—RIGHT OF WAIVER—CODE OF CIVIL PROCEDURE (Act V of 1908), ss. 86, 87.

Appeal by the Gaekwar Baroda State Railway from a judgment of the High Court, Allahabad, which varied, but in the main confirmed, a decree of the Subordinate Judge of Agra.

The plaintiff, whose personal representatives were respondents to the appeal, entered into contracts for the supply of sleepers to the appellant railway, which contracts were made in Baroda between the plaintiff and a man who signed the contracts as "manager and engineer-in-chief." The railway having claimed the right to refuse delivery of the sleepers, the plaintiff brought an action for breach of contract.

Sir LANCELOT SANDERSON, delivering the judgment of the Board, said that the authorities were inconsistent on, and their lordships proposed to leave open, the question whether the modification by the High Court of the decree granted by the subordinate judge constituted a differing between the courts in India for the purposes of a certificate of fitness for appeal. The issue was tried by the subordinate judge: "Is the Maharaja Gaekwar of Baroda a necessary party to the suit? Is the suit as framed maintainable?" That raised an important question, for it was alleged on behalf of the defendant that the suit was in reality, though not in form, a suit against H.H. the Gaekwar of Baroda, that it had been framed in the above-mentioned manner because of the difficulty in the plaintiff's way caused by the provisions of ss. 86 and 87 of the Civil Procedure Code, 1908 [which laid down the conditions under which a Sovereign Prince could sue or be sued in the courts of British India], and that it was an attempt to fix H.H. the Gaekwar with liability in that indirect manner. The judges of the High Court had expressed the opinion that the position was "that the owner of the corporation carries on business under an assumed name, and the suit therefore can be instituted against that assumed name without in any manner infringing the provisions of s. 86 of the Civil Procedure Code." Their lordships were unable to assent to that proposition. Sections 86 and 87 of the Code related to an important matter of public policy in India, and the express provisions contained therein were imperative and must be observed. H.H. the Gaekwar was a Sovereign Prince within the meaning of those sections, and it was admitted that no certificate had been obtained as provided by s. 86, and, further, that no such certificate could have been obtained, as none of the conditions contained in s. 86 (2) (*a*), (*b*) and (*c*) were applicable to this case. The respondents argued that the question whether the railway was a corporation was a question of fact, and must be determined in accordance with the law of the State of Baroda. For that proposition they relied on two cases: *Banque Internationale de Commerce de Petrograd* v. *Goukassow* [1923] 2 K.B. 682, and *Lazard Brothers & Co.* v. *Midland Bank* [1933] A.C. 289. It was contended that, by analogy, the courts in British India should recognise the railway as a juristic person, inasmuch as it could be shown from the materials in the record of this case that the railway had been established in the State of Baroda as a corporation. In their lordships' opinion, there was no evidence on the record to support such a contention, and it was directly contrary to the admission made on behalf of the plaintiff at the trial of the suit—namely, "that the railway is neither a State railway nor a company railway, but is owned and managed by His Highness the Maharaja of Baroda through his own men." The appeal should be dismissed.

COUNSEL: *Sir William Jowitt*, K.C., and *Sir Thomas Strangman*, for the appellants; *C. S. Rewcastle*, K.C., *Abdul Majid* and *Dingle Foot*, for the respondents.

SOLICITORS: *Gregory, Rowcliffe & Co.*; *Douglas Grant and Dold*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Smith *v.* Cammell Laird & Co.

Greer, Slesser and Clauson, L.JJ. 12th April, 1938.

FACTORY — NEWLY-BUILT SHIP — COMPLETION IN SHIPBUILDER'S DOCK—STAGING IN HOLD—USED BY COMPANY DOING INSULATING WORK FOR SHIPOWNERS—DEFECT IN STAGING—ACCIDENT—LIABILITY—FACTORY AND WORKSHOP ACT, 1901 (1 Edw. 7, c. 22), ss. 79, 104, 149, 151—SHIPBUILDING REGULATIONS, 1931.

Appeal from a decision of Goddard, J.

A shipbuilding company were constructing for certain shipowners a vessel which had been launched and placed for finishing in a wet dock in the shipbuilding yard. The finishing was being done partly by the builders and partly by other firms employed by the owners. For the purpose of part of the work a staging was put up in the hold. The contract between the owners and the builders did not include insulating the vessel with cork. This was done by another company, who were allowed for that purpose to use the staging. The plaintiff was employed by them and worked on the staging. Owing to a defect therein he fell and was injured. In an action by him claiming damages for injuries caused by negligence on the part of the shipbuilders, and breach of the duties imposed on them by the Shipbuilding Regulations, 1931, the defendants denied that these were applicable and, if they were applicable, denied any breaches thereof. They also pleaded that the injuries had been caused by the plaintiff's own negligence or breaches of statutory duty. Goddard, J., dismissing the action, held that the shipbuilders had left the staging standing merely for the convenience of the insulating company and without any duty to them to maintain it and that the duty imposed by the Regulations on the occupiers of the premises to see that the staging was safe was cast on the insulating company who, for the purposes of the operation in question, were the occupiers of the staging or of the part of the ship where it was erected.

GREER, L.J., dismissing the plaintiff's appeal, said that the only question litigated below was whether the shipbuilders continued in occupation of the ship and every part of it or had handed over possession and occupation of the staging to the insulating company, and it was not then suggested that under the Regulations the shipbuilders could not hand over part of their premises to an occupier so as to make him an occupier thereof within the meaning of those Regulations, nor that they as occupiers of a shipbuilding yard, which was a factory subject to the Regulations, were the only people who could be held liable as such occupiers. That was argued before the Court of Appeal for the first time. His lordship referred to ss. 149 (2) and 151, and said that whether or not there was an approval in writing of the chief inspector that the staging should be treated as a separate factory or workshop, or an order of the Secretary of State having the same effect, was a question of fact. Had the contention been put forward at the trial it would have given rise to a right in the shipbuilders to prove a fact which would have constituted the staging a separate factory. The court should not now be satisfied that it had before it all the facts bearing on the

plaintiff's new contention (see "*The Tasmania*," 15 App. Cas. 223, 225). In its discretion the court should refuse to hear the belated argument. Further, even if it had been entertained, the contention had no weight (see s. 104 of the Act and *Bartell* v. *W. Gray & Co.* [1902] 1 K.B. 225, and *Weavings* v. *Kirk and Randall* [1904] 1 K.B. 213). Further, the fact that all the yard was made a factory within the Act by s. 79 and the Regulations did not take a part of the yard which was in fact a dock outside s. 104. *Smith* v. *Standard Steam Fishing Co.* [1906] 2 K.B. 275, and *Line* v. *Griffin* [1905] A.C. 220, did not affect the question.

SLESSER, L.J., dissented.

CLAUSON, L.J., agreed.

COUNSEL: *Goldie*, K.C., and *Shawcross*; *Sellers*, K.C., and *J. S. Lloyd*.

SOLICITORS: *Helder, Roberts, Giles & Co.*, for *John A. Behn, Twyford & Reece*, of Liverpool; *Layton & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Reardon Smith Line Ltd. *v.* Black Sea and Baltic General Insurance Co. Ltd.

Greer, Slesser and Clauson, L.JJ. 12th April, 1938.

SHIPPING — OIL-BURNING STEAMER — CHARTER-PARTY — VOYAGE—LIBERTY TO CALL AT ANY PORT TO BUNKER—DEVIATION FOR BUNKERING—STRANDING—PART OF CARGO JETTISONED — GENERAL AVERAGE CONTRIBUTION — LANGUAGE OF CHARTER-PARTY—WHETHER EVIDENCE INCONSISTENT WITH TERMS ADMISSIBLE.

Appeal from a decision of Goddard, J.

The plaintiffs owned a line of tramp steamers going among other places to Black Sea ports, chiefly Novorossik and Eupatoria on its north side, and Poti on its east side. By a charter-party of the 1st September, 1933, they agreed to charter three oil-burning steamers in October, November and December respectively to a German company, which should load certain cargoes at Poti, and, being so loaded, should proceed with all convenient speed to Baltimore, U.S.A. It provided that the general average should be payable according to York-Antwerp Rules, 1924, and that a guarantee for cargo's liability for general average contribution and/or salvage charges should be given by the defendants. The charter contained the usual exceptions of perils of the sea, and provided that the ship should be at liberty to call at any port or ports in any order, or places to bunker or receive and/or deliver part cargo and/or passengers or to deviate for the purpose of saving life or property. There was evidence that between 1930 and 1933 about 25 per cent. of the oil-burning ships loading at Black Sea ports called to bunker at Constanza on its west side, where oil was cheap and abundant, even though that port was not on the direct line from the port of loading to that of discharge. No objection was ever taken by shippers or charterers, though the course must have been well known to firms interested in the Black Sea trade. The two earlier ships chartered in September, 1933, followed this course. The last having also gone to Constanza, was there stranded on a reef. Some of the cargo had to be jettisoned, and it was agreed that the remainder should be taken to Rotterdam. There the receivers refused to pay freight on the part of the cargo jettisoned. In consideration of the plaintiffs agreeing to release their lien on the remaining cargo the defendants paid the outstanding amount of the freight into an account in the joint names of themselves and the plaintiffs. The plaintiffs claimed that the defendants were liable to pay them the contribution due from the cargo towards the general average sacrifice, loss, expenditure, salvage and special charges on the cargo and accordingly claimed to be entitled to the sum deposited in the bank. Goddard, J., gave judgment for the plaintiffs on the ground that the route taken was the ordinary commercial route for an oil-burning ship, and that there had been no deviation. The defendants appealed.

GREER, L.J., delivered a dissenting judgment.

SLESSER, L.J., allowing the appeal, said that the language of the charter-party was clear. There was only one voyage mentioned "from the port of shipment to the port of destination . . . a voyage on the ordinary track by sea of a voyage from the one place to the other." (*Leduc* v. *Ward*, 20 Q.B.D., at p. 481). The ordinary practicable sea track was substantially in a line from Poti to the Bosphorus. There was no question of impracticability of using one ordinary direct route as in *Evans, Sons Ltd.* v. *Cunard Steamship Co. Ltd.*, 18 T.L.R. 374. The question was whether the course to Constanza, considerably north of the Bosphorus, involving a further day in steaming, was, in the circumstances, the contracted voyage. Once it was held that the voyage provided for was a direct route, no evidence of an agreement to the contrary could be considered: *Grey* v. *Pearson*, 6 H.L. Cas. 61; *Frenkel* v. *McAndrews & Co. Ltd.* [1929] A.C., at pp. 550, 552, 562, 567; *Glynn* v. *Margetson & Co.* [1893] A.C. 351. The words in the charter-party, in the absence of a proved trade custom in the strict sense, completely defined the object and intention of the contract. It had not been attempted to set up such a custom which must be definite and uniformly adapted and certain: *Nelson* v. *Dahl*, 12 Ch. D., at p. 575. Had the charter been ambiguous it might well have been that the route taken could have been held to be a usual commercial route. But when the words were in their literal meaning unambiguous, that meaning not being excluded by the context and being sensible with respect to the circumstances of the parties, the literal meaning must be taken to be that in which the parties used the words. In the absence of proved custom, a charter providing without qualification for a direct voyage must be taken to refer to the ordinary track by sea. It might be otherwise where there were alternative routes or the only practicable route was not the direct one. On a point raised as to waiver, his lordship said that there was no evidence of the intention of the parties to vary the contract, but even had it been held that the charterers had waived their right to insist on a direct voyage, the defendants, who were guarantors under the ordinary form of average guarantee, were not bound by any such waiver.

CLAUSON, L.J., agreed.

COUNSEL: *Pilcher*, K.C., *Willmer* and *Norman Craig*; *Miller*, K.C., and *C. T. Miller*.

SOLICITORS: *Thomas Cooper & Co.*; *Botterell & Roche*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re A Debtor (No. 975 of 1937).

Greene, M.R., Scott and Clauson, L.JJ. 28th April, 1938.

BANKRUPTCY—DAMAGES AGAINST CO-RESPONDENT—ORDER FOR PAYMENT TO PETITIONER TO ABIDE COURT'S DECISION—NON-COMPLIANCE—SUBSEQUENT ORDER FOR PAYMENT TO PETITIONER—BANKRUPTCY PETITION—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), s. 1 (1)—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 189 (3).

Appeal from a decision of Mr. Registrar Kean.

Two thousand pounds damages having been awarded against a co-respondent in divorce proceedings in February, 1937, he was ordered to lodge that amount in court within a certain period. He failed to comply with the order, and in March, 1937, a further order was made that he should within a certain period pay the amount in question to the petitioner on the joint undertaking of the petitioner and his solicitor to abide by the court's decision as to its ultimate application. This order not having been complied with, the petitioner issued a summons asking for payment to himself without any undertaking, and on the 1st November, 1937, the court ordered the co-respondent within a certain period to pay the

petitioner "£1,000 part of the sum of £2,000 the amount of damages assessed herein." This was not paid, and the petitioner served a bankruptcy notice claiming £1,000 as the "amount due on a final judgment or order" dated the 1st November. Subsequently a petition was filed and a receiving order made.

GREENE, M.R., dismissing the debtor's appeal, said that the reason for the undertaking in the order of March, 1937, was that the court had jurisdiction to deal with the damages awarded against a co-respondent and direct that they should be applied in suitable cases wholly or partly for the benefit of the wife or children of the marriage. Part of them or the whole might also be ordered to be paid to the petitioner for his own benefit. That order did not create a debt on which a bankruptcy petition could be founded (*In re Muirhead*, 2 Ch. D. 22). It had been said that the unconditional order of November, 1937, did not create a debt sufficient to support a petition on the ground (1) that the order was made without jurisdiction if its effect was to give the petitioner the right to keep the £1,000 for his own benefit, and (2) that the order should be construed as being of the same character as that of March, 1937, i.e., an order subject to any subsequent order of the court. As to the first point, it had been said that under the Supreme Court of Judicature (Consolidation) Act, 1925, s. 189 (3), the court had no power to make a final order as to the destination of damages awarded until they had been got in by payment into court or payment to the petitioner on behalf of the court. It was the usual practice in the Divorce Division not to apply for a final order as to the destination of damages till they had been got in, but s. 189 (3) did not limit the court's power as suggested. As to the second point, the order of November was quite different from the order of March, and entitled the petitioner to serve a bankruptcy notice under the Bankruptcy Act, 1914, s. 1 (1) (*g*), since it was one which he could enforce immediately, and upon which he could have levied execution forthwith.

SCOTT and CLAUSON, L.JJ., agreed.

COUNSEL: *Raeburn; Eddy*, K.C., and *Leonard Lewis*.

SOLICITORS: *Sidney Pearlman; Goodwins*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Barnes *v.* Irwell Valley Water Board.

Greer, Slesser and MacKinnon, L.JJ. 5th May, 1938.

WATER—DUTY OF UNDERTAKERS—PURE AND WHOLESOME WATER SUPPLIED TO MAINS—SUBSEQUENTLY IMPREGNATED WITH LEAD—WHETHER BREACH OF DUTY.

Appeal from a decision of Mr. Commissioner Collins at the Manchester Assizes.

The plaintiff Barnes first felt the effects of lead poisoning in October, 1934, and his wife felt it a little later. Medical examination confirmed that they were suffering from lead poisoning, probably due to water which, being "plumbo-solvent," had absorbed lead from the service pipes of their house. The softness of the water was the probable reason for its being "plumbo-solvent," but the water board had fulfilled their statutory duty of supplying pure and wholesome water in the mains. From 1929 to 1935 there had been complaints made by consumers that they were suffering from lead poisoning. In that period there had been about six cases of lead poisoning. In October, 1935, temporary measures for dealing with the quality of the water were adopted, and subsequently an expensive hardening plant was installed, after which there were no more cases of lead poisoning. The plaintiffs claimed damages on the ground (*inter alia*) that the water board had been negligent in supplying water which they knew, or should have known, might become impregnated with lead to a dangerous degree and in failing to warn them of the danger of using the water in the state in which it was delivered. Judgment was given in their favour.

GREER, L.J., dismissing the defendants' appeal, said that they had been repeatedly warned that the water passing through lead pipes was liable to contamination before reaching the consumers. In those circumstances it was their duty to supply it in such a condition that, when used, after going through lead pipes, it would be reasonably fit for domestic purposes. There was no breach of statutory duty and the court had to consider whether there was some further duty on the board to exercise reasonable care that, when the water reached the point of consumption, it should be reasonably fit for use. The complaints might have been met by adopting a method of reducing the plumbo-solvency of the water or by warning consumers to draw off a certain quantity of water which had been standing in the pipes before drinking it. It was no protection to the board to say that they had been advised by the local authority that it might be dangerous to frighten people by sending out a warning notice. They had failed in their duty to take reasonable care to protect the consumers' interests.

SLESSER and MACKINNON, L.JJ., agreed.

COUNSEL: *Fyfe*, K.C., and *Barry*, K.C.; *Lynskey*, K.C., and *Spafford*.

SOLICITORS: *Lewin, Gregory, Torr, Durnford & Co.*, for *Richard Moore*, of Bury; *Barlow, Rowland & Co.*, of Accrington.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

In re Warren; *Ex parte* Wheeler *v.* Mills.

Luxmoore and Morton, JJ. 4th April, 1938.

BANKRUPTCY—GUARANTEE OF BANKRUPT'S OVERDRAFT—MONEYS RECEIVED BY HIM FROM SALE BY SALE OR MORTGAGE OF PROPERTY TO BE PAID TO SOLICITORS—SOLICITORS TO PAY THEM INTO GUARANTOR'S BANKING ACCOUNT—THEREAFTER TO BE APPLIED IN REDUCTION OF OVERDRAFT—MONEY PAID INTO GUARANTOR'S ACCOUNT—RECEIVING ORDER AGAINST BANKRUPT LATER IN SAME DAY—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), s. 45.

Appeal from Rochester County Court.

A builder agreed to buy from a company certain land on which to erect four houses. In order to finance him the controlling shareholder of the company guaranteed an overdraft on his banking account. By a term of the arrangement made between them, when the houses erected had either been sold to purchasers or mortgaged to a building society, the builder was to pay the purchase or mortgage money to the guarantor's solicitors who were also to act for him. Out of these moneys the solicitors were to pay the company the purchase price of the land and after retaining the amount of their costs were to pay the balance to the credit of the guarantor's banking account. The moneys so paid were to be applied to the reduction of the builder's overdraft. This arrangement was duly carried out in connection with the first of the houses completed. The three other houses having been erected the builder mortgaged them to a building society and paid the mortgage money to the solicitors. This, after deducting their charges and a payment to the company, amounted to £963, and was paid by them to the credit of the firm's clients' account on Saturday, the 13th March, 1937, the day on which they received it. They made an entry in their books in favour of the builder though they subsequently stated that, having regard to the terms of the arrangement, they could not have paid any part of the sum to him. On Monday, the 15th March, 1937, they paid the sum by cheque into the banking account of the guarantor before 11 a.m. Later in the same day a receiving order was made against the builder on a petition presented on the 14th February, 1937. The builder was adjudicated bankrupt on the 18th March, 1937. At the time of the payment neither the guarantor

nor the solicitors had notice of the bankruptcy proceedings. His Honour Judge Clements ordered the guarantor to pay the £963 to the trustee in bankruptcy.

LUXMOORE, J., allowing the guarantor's appeal, said that the questions were (1) whether by reason of the arrangement made, there was an equitable assignment of the moneys received by the solicitors or whether the money remained the builder's property; and (2) whether, assuming the moneys remained the builder's property the payment of them into the guarantor's banking account was protected under the Bankruptcy Act, 1914, s. 45. The judge had held that the arrangement between the parties did not constitute a contract but was a mere statement of the procedure to be followed with regard to moneys received by the builder and that it gave no property in them to the guarantor. That was not a finding of fact, but a conclusion of law resulting from the facts found in relation to the arrangement and so was open to review. The conclusion was untenable. The solicitors could not, without the joint consent of the guarantor and the builder, have dealt with the moneys otherwise than in accordance with the arrangement. If the builder had directed them to pay the moneys to him they would have been bound to refuse (*Holroyd* v. *Marshall*, 10 H.L.Cas. 191; *In re Lind* [1915] 2 Ch. 345). *Palmer* v. *Carey* [1926] A.C. 703, was explained in *In re Gillott's Settlement* [1934] Ch. 97. The arrangement constituted a good equitable assignment and the payment to the guarantor's banking account could not be impeached, because the moneys were not the builder's moneys to dispose of as he wished. Though that was enough to dispose of the case, the second point should also be dealt with. The guarantor was a creditor within the Bankruptcy Act, 1914, s. 45 (*In re Paine* [1897] 1 Q.B. 122). The substantial question was whether the payment to his bank was "before the date of the receiving order." In point of time it was made before the receiving order was pronounced. The judge had held that the receiving order was a judicial act and that there was a rule of law that a judicial act was deemed to have been performed at the earliest moment of the day on which it was performed. His lordship referred to *Edwards* v. *R.*, 9 Ex., at pp. 631, 632, and *Clarke* v. *Bradlaugh*, 8 Q.B.D., at pp. 65, 67, 68, and said that when there was competition in point of time between a judicial act and a non-judicial act the rule gave precedence to the judicial act. But if the competition was between two judicial acts the actual time when each was done could be considered and priority should be given to the earlier unless there was some other ground for preferring the one act to the other. Here the making of the receiving order should be referred back to the earliest moment of the 15th March, and the payment into the bank, although in point of time, it took place earlier could not be treated as having been made before it. But, by reason of the court's opinion on the first point, the appeal should be allowed.

COUNSEL: *J. B. Blagden* and *Scarman*; *Wiggins*.

SOLICITORS: *J. D. Langton & Passmore*; *Braby & Waller*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Salvin's Indenture; Pitt *v.* Durham County Water Board.

Farwell, J. 12th April, 1938.

WATER—UNDERTAKING—STATUTORY AUTHORITY—COMPULSORY POWERS—SPECIFIED PIPE LINES—DEVIATION—ACQUISITION OF LICENCE TO LAY PIPES—AGREEMENT WITH OWNER—COMPULSORY POWERS NOT EXERCISED—WHETHER EASEMENT BINDING ON SUCCESSOR IN TITLE OF LANDOWNER.

The Weardale and Shildon District Waterworks Co. was incorporated in 1866, by a statute for the better supplying of a certain district with water, and was given certain powers of acquiring land and other rights and easements compulsorily. The limits thereby imposed were extended by statute in 1875 and 1879. By an Act of 1920, the defendant board succeeded the company. The 1879 Act, which extended the limits of supply, gave the company power to lay certain defined lines of pipes in the lines and situations and on the lands shown on the deposited plans. There was power to purchase the lands shown on the plans or any such easement, right or privilege in or over the same as the company might require. Certain limits of deviation were fixed, and a time limit set for the exercise of the powers of compulsory purchase. It was also declared that the company might purchase a limited amount of land by agreement for the purposes of the undertaking. Further, it was declared that there might be taken by agreement any easement or right of laying pipes through any lands within the limits of supply, subject to the provisions and for any purposes of the Act or of the Acts of 1866 and 1875. When the pipes came to be laid, the line was diverted at a particular point from the line prescribed across certain land belonging to one Salvin and now owned by the plaintiff in fee simple. This was done by virtue of a grant made in 1880 by Salvin whereby, in consideration of a yearly rent-charge of £3, he granted so far as he lawfully could to the company, their successors and assigns, the free and uninterrupted right, easement, liberty, leave, licence, power and authority to lay and maintain pipes for the conveyance of water for the purposes of the company through the land in question. There was a provision that the pipes should be laid at a certain depth if required by Salvin, his heirs or assigns. The rights granted were to be enjoyed for ever for the purposes of the Act in question. The question now arose whether the rights so were binding on the plaintiff who had recently acquired the land. Till then the rent reserved had been regularly paid to the grantor and his successors.

FARWELL, J., said that the plaintiff contended (1) that the acquisition of the right of laying pipes given by the grant was *ultra vires* the company and never could have been enforced; and (2) that if it was not *ultra vires* it was merely a personal licence which ceased as soon as the land passed from the grantor's ownership. His lordship said that the acquisition of such an easement as this was not unlawful so long as the consent of the owner of the lands was obtained, and such acquisition would not by itself require Parliament's help. But when it was a question of laying a long line of pipes it would be impossible to rely on the acquisition of the necessary rights by mere agreement and so the power to acquire them by compulsion had to be obtained from Parliament. For the protection of owners of adjoining land a company seeking such powers had to show on the deposited plans the line of the proposed site, and it was necessary that the limits within which the company might deviate should be defined. But the Act giving the compulsory powers did not take away the right to acquire at any time without any limit an easement or land by mutual agreement with the landowners. The only limit was that such acquisition should be for the purpose for which the company was incorporated, i.e., the storage and supply of water in the district defined by the Act. There was nothing *ultra vires* the company in acquiring by agreement the right to lay pipes outside the limits of deviation. There was no evidence as to the reason for the deviation in question, but in the absence of evidence to the contrary the court was entitled to proceed on the footing that the acquisition of the rights and the laying of the pipes in the way selected was for a proper reason for carrying out the company's objects. Further, it was doubtful whether the plaintiff, as successor in title of the grantor, could be heard to say that there was not good and sufficient reason for what the company did. This grant was not *ultra vires*. It was further said that this was only a personal

licence. If it had been an attempt to create an easement in gross, it could not have bound the plaintiff. It had been argued that here there was no dominant tenement. But the undertaking, composed of corporeal and incorporeal hereditaments, was capable of being the dominant tenement, and the dominant tenement need not be contiguous to the servient tenement: *Todrick* v. *Western National Omnibus Co. Ltd.* [1934] Ch. 561. This easement was intended to be and capable of being used in connection with the undertaking, and could be validly granted, so that persons acquiring the land acquired it subject to the grant. The defendant board could enforce the grant against the plaintiff.

COUNSEL: *D. Jenkins*, K.C.; *Roxburgh*, K.C., and *P. Sykes*.

SOLICITORS: *Blundell, Baker & Co.*, for *Ritson, Hope & Wood*, of Sunderland: *Howe & Rake*, for *Lucas, Hutchinson & Meek*, of Darlington.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Elof Hansson Agency, Limited *v.* Victoria Motor Haulage Company, Limited.

Singleton, J. 31st March, 1938.

CONTRACT—CARRIAGE OF GOODS FROM SHIP BY UNSEAWORTHY BARGE—LIABILITY OF CARRIER—LONDON LIGHTERAGE CLAUSE—VALIDITY OF AMENDED FORM.

Action for damages for breach of contract, and /or negligence.

The plaintiffs were the owners of 113 bales of greaseproof paper discharged in Surrey Commercial Docks from the steamer "Regulus." The defendants were haulage, wharfage and lighterage contractors, carrying on business at Wapping. The plaintiffs engaged the defendants to collect the cargo from the "Regulus" and to deliver it as instructed by the plaintiffs. The defendants had part of the cargo loaded from the "Regulus" into an iron barge, which sank in the docks, with the result that seven of the bales were totally lost and sixty-six bales were delivered damaged. The plaintiffs contended that it was the duty of the defendants to provide a sound barge, and that the defendants negligently and in breach of their contract received the cargo on board the barge which, as they knew or ought to have known, was unsound. The defendants contended that the plaintiffs knew that they had no barges of their own, and that the contract which they made in this case was subject to the implied term, in so far as it related to the collection and conveyance of the cargo by barge from the "Regulus," that it should include the provisions of the London Lighterage Clause. That clause, as amended on the 1st July, 1937, provided, so far as material, that the goods were carried only at owner's risk, excepting loss arising from pilferage and theft of goods on board the barge whilst in course of transit.

SINGLETON, J., said that the loss was occasioned by the fact that the barge was unseaworthy. The defendants did not take any steps to see that the barge provided for them by the lighterage company was seaworthy. As to whether the plaintiffs could succeed on that finding, this was a contract of affreightment, and the warranty of seaworthiness therefore applied unless there were a stipulation to the contrary. The only condition printed on the defendants' notepaper was "not responsible for strikes, lock-outs or labour disturbances of any kind," and he was satisfied that the defendants did not bring any other terms to the notice of the plaintiffs. There was nothing to show that the plaintiffs knew of the terms of the contract between the defendants and the lighterage company, or even that the defendants would make a sub-contract at all and not do the work themselves. Even assuming that the defendants had the right to sub-contract, the plaintiffs could not be bound by the terms of the sub-contract when those terms had not been communicated to them. Although *primâ facie* there was nothing to call the plaintiffs' attention to any condition beyond the sentence "not responsible for strikes," etc., he held that the plaintiffs must be taken to have known that there was the London Lighterage Clause, which governed the barge transport. But he would not hold that the clause in its amended form applied. It had not yet been accepted universally, and there was nothing to show that at the material time lighterage could not have been obtained on the old conditions without the amendment. The defendants did not specially bring the amendment to the notice of the plaintiffs, and he would not hold that the amendment must be read into the contract. There must be judgment for the plaintiffs.

COUNSEL: *A. J. Hodgson*, for the plaintiffs; *J. G. Trapnell*, K.C., and *G. Bankes*, for the defendants.

SOLICITORS: *Clyde & Co.*; *J. A. & H. E. Farnfield.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Chisholm and Another *v.* London Passenger Transport Board.

Hilbery, J. 28th April, 1938.

ROAD TRAFFIC—PEDESTRIAN CROSSINGS—CROSSINGS AT CROSS ROADS CONTROLLED BY TRAFFIC LIGHTS—STATIONARY BUS RELEASED BY LIGHT AT ONE CROSSING—WHETHER RELEASE SIGNAL APPLICABLE TO ANY OTHER CROSSING AT CROSS ROADS—REGULATIONS APPLICABLE—PEDESTRIAN CROSSING PLACES (TRAFFIC) PROVISIONAL REGULATIONS, 1935, Regs. 3, 5.

Action for damages for personal injuries.

At about 1.35 p.m. on the 8th March, 1937, the infant plaintiff, who sued by his father, was crossing Fleet Street, E.C., on a pedestrian crossing, at the junction of that street with New Bridge Street, when an omnibus driven by a servant of the defendants collided with the infant plaintiff, who was injured. By reg. 3 of the Pedestrian Crossing Places (Traffic) Provisional Regulations, 1935, "the driver of every vehicle approaching a crossing shall, unless he can see that there is no foot passenger thereon, proceed at such a speed as to be able if necessary to stop before reaching such crossing." By reg. 5 "the driver of every vehicle at or approaching a crossing at a road intersection where traffic is for the time being controlled by a police constable or by light signals, shall allow free and uninterrupted passage to every foot passenger who has started to go over the crossing before the driver receives a signal that he may proceed over the crossing."

HILBERY, J., said that he was satisfied that the boy began to cross on the pedestrian crossing. The omnibus was then not yet on the crossing. In other words, it was a vehicle approaching a crossing at the time when the boy stepped on to the roadway within the bounds of the crossing. Regulation 3 of the Regulations of 1935 had been construed by the Court of Appeal in *Bailey* v. *Geddes*, 53 T.L.R. 975; 81 SOL. J. 684. The Court of Appeal had there apparently held that, once a pedestrian was on a pedestrian crossing to which the regulation applied, and a vehicle was an approaching vehicle to which the regulation applied, no want of care on the part of the pedestrian which might have prevented him from recovering at common law was relevant, because the duty put on the driver by the regulation was such that, had he obeyed it, he must have avoided the consequence of any negligence which there might have been on the part of the pedestrian. In those circumstances it followed that the defendant company were liable under the regulation. But counsel had argued for the defendants that this was a controlled crossing, and that it must come within reg. 5, and that regs. 3 and 5 were mutually exclusive. He (his lordship) did not himself so construe the two regulations. Regulation 5 contained the words "at a road intersection," which were absent from regs. 3 and 4. He thought that reg. 5 was designed to have a particular application to a pedestrian crossing which was at a road intersection. Clearly, whether a pedestrian crossing was at the foot of

Ludgate Hill, or at the mouth of any of the streets feeding Ludgate Circus, it was a crossing at a road intersection. But at what intersection? When a light at the foot of Ludgate Hill turned green so as to enable traffic to proceed, the intention of reg. 5 would come into operation. When the traffic which had been stationary at that crossing then received the signal to go on, it must still allow free and uninterrupted passage to every foot passenger who had started to cross before the stationary driver had received the signal that he might go over the crossing. But if the application of that regulation were extended at such a place as Ludgate Circus so as to apply to all the crossings at the mouths of the several roads which opened into Ludgate Circus, so that the operation of one set of lights brought the regulation itself into operation with regard to all the pedestrian crossings, difficulty and danger would necessarily occur. If the regulation were confined to any one of those crossings according as a light was being worked at it, it gave the protection which it was designed to give. For example, if traffic were released from Ludgate Hill, the driver of a vehicle stationary at the studs of the crossing must give free and uninterrupted passage to a pedestrian who had begun to cross before the signal to proceed was received by the driver. But when the driver had done that and passed over the crossing, reg. 5 was not the one which applied. The regulation which then came into operation was the regulation which affected him as a driver approaching "a crossing," namely, reg. 3. The present was a case where the driver was approaching "a crossing." The infant plaintiff had the right to expect the driver of the omnibus to drive in accordance with that regulation. There must be judgment for the plaintiffs.

COUNSEL: *Glyn Jones*, for the plaintiff; *N. R. Fox-Andrews*, for the defendants.

SOLICITORS: *Gardiner & Co.*; *R. Macdonald.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Lloyd *v.* Lloyd and Leggeri.

Langton, J. 22nd, 23rd March; 5th, 6th, 7th April, 1938.

DIVORCE—CONNIVANCE—KNOWLEDGE OF WIFE'S ADULTERY—HUSBAND'S TOLERATION—PRESUMPTION AGAINST CONNIVANCE—EFFECT OF MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8, and 1 Geo. 6, c. 57), s. 4.

This was a husband's petition for dissolution on the ground of the wife's adultery with a named co-respondent. The respondent and co-respondent denied adultery, and the respondent pleaded connivance and conduct conducing. At the time of the marriage in 1928 the petitioner had been divorced and the respondent, who was a widow, had been the mistress of two men. Owing to the failure of the petitioner's fortunes the respondent in 1935 had gone to live in the co-respondent's house in the capacity of housekeeper, and adultery was alleged to have taken place between them during the period from July, 1935, to October 1936. Throughout that period the respondent returned to the petitioner from time to time on short visits, during which they lived together again as man and wife. The petitioner admitted in evidence that from September, 1935, he knew of the guilty relationship between the respondent and co-respondent, but hoped that by continuing relations when the respondent came, he would be able to get her back to live with him in the end. But in June, 1936, an incident occurred which seemed to make it clear to the petitioner that the respondent preferred the co-respondent to himself, and the petitioner then made up his mind that there was no point or use in tolerating the position any longer, and resolved to bring divorce proceedings.

LANGTON, J., in the course of giving judgment, reviewing the authorities, said that a man could not make his own law in the matter and say: "The test with me is whether her affection has changed, not whether she commits adultery, and I will ask the court to give me a decree on the ground of adultery when I find what I really care about, her affection, has been taken from me." It might be said that the petitioner, had, in the words of Lord Stowell, in *Crewe* v. *Crewe* (1800), 3 Hagg. Ecc. 123, made up his mind to some other satisfaction. It was hard indeed to say that the petitioner did not acquiesce by wilfully abstaining from taking steps to prevent what he knew was going to occur. The case seemed to fall within the definition of connivance given by Lord Westbury, L.C., in his opinion in *Gipps* v. *Gipps and Hume* (1864), 11 H.L. Cas. 1. "The word 'conniving' is not to be limited to the literal meaning of wilfully refusing to see, or affecting not to see or become acquainted with, that which you know or believe is happening, or about to happen. It must include the case of a husband acquiescing, by wilfully abstaining from taking any steps to prevent, that adulterous intercourse, which, from what passes before his eyes, he cannot but believe or reasonably expect is likely to occur." It seemed to him, his lordship, that the law of England amounted to this, that a man might not stand by and tolerate his wife's adultery, meeting her, conversing with her, having intercourse with her, as the petitioner did, and thereafter because of some private view of his own as to what a woman owed to her husband, complain of her violation of that private view and come to the court to seek a remedy. His lordship referred to *Poulden* v. *Poulden* [1938] P. 63; 82 SOL. J., 197, and in commenting on the judgment of Bucknill, J., as to the effect which s. 4 of the Matrimonial Causes Act, 1937, had of changing the burden of proof in matters of connivance, he, Langton, J., would venture to say two things: First, that he was not altogether sure that the law had been partly changed by the Act, but that he concurred entirely with the statement of Bucknill, J., of the law as it stood to-day; secondly, that he would desire to reserve his opinion as to any question of presumption of law having been changed. The case as reported might almost seem to suggest—though the judge certainly did not say it in terms—that there was now a presumption of law in favour of connivance. He should wish to hear the matter very fully argued before he subscribed to that doctrine. The petition failed to surmount the fatal ban of connivance, and must be dismissed. There would be an order for the respondent's costs limited to the amount of the security as extended, and no order as to costs as between the petitioner and the co-respondent.

COUNSEL: *J. J. Davies*, for the petitioner; *J. E. N. Russell* (with him *H. B. Durley Grazebrook*), for the respondent; *Acton Pile*, for the co-respondent.

SOLICITORS: *O. L. Blyth*; *O. L. Richardson*; *L. Bingham and Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Law in Detective Stories.

Sir,—Here is another instance of a decided slip occurring in "Big business murder," by Mr. and Mrs. Cole.

In this tale the murderer came to grief in an accident which happened before he could be arrested, but there was a prosecution of sundry fraudulent directors, and the trial was presided over by "*Lord* Justice Mugge."

Surely a learned economist who might be expected to have made some study of constitutional history, might be expected to know the difference between the functions of a judge of first instance and a lord justice of appeal.

London, E.C. E. S. W.

7th April.

Parliamentary News.

Progress of Bills.

House of Lords.

Blackpool Improvement Bill.
Reported, with Amendments. [4th May.
Coal Bill.
Read Second Time. [5th May.
Eire (Confirmation of Agreements) Bill.
Read First Time. [11th May.
Harwich Harbour Bill.
Read Second Time. [10th May.
Hire-Purchase Bill.
Read First Time. [10th May.
Increase of Rent and Mortgage Interest (Restrictions) Bill.
In Committee. [10th May.
Irvine and District Water Board Order Confirmation Bill.
Reported. [10th May.
Ministry of Health Provisional Order (Bridgwater Extension) Bill.
Amendments Reported. [11th May.
Ministry of Health Provisional Order (Scarborough) Bill.
Read Third Time. [11th May.
North West Midlands Joint Electricity Authority Provisional Order Bill.
Read Third Time. [11th May.
Prevention and Treatment of Blindness (Scotland) Bill.
Read First Time. [10th May.
Sea Fish Industry Bill.
Read Second Time. [11th May.
Wear Navigation and Sunderland Dock Bill.
Reported, with Amendments. [4th May.
West Thurrock Estate Bill.
Reported, with Amendments. [4th May.

House of Commons.

Administration of Justice (Miscellaneous Provisions) Bill.
Read Second Time. [9th May.
Bakehouses Bill (changed to "Baking Industry (Hours of Work) Bill").
Reported, with Amendments. [5th May.
Chimney Sweepers Acts (Repeal) Bill.
Read First Time. [10th May.
Eire (Confirmation of Agreements) Bill.
Read Third Time. [10th May.
Fire Brigades Bill.
Read Second Time. [10th May.
Herring Industry Bill.
Read First Time. [11th May.
Hire-Purchase Bill.
Read Third Time. [6th May.
Housing (Rural Workers) Amendment Bill.
Read Second Time. [9th May.
Irvine and District Water Board Order Confirmation Bill.
Read Third Time. [6th May.
Lancashire County Council (Rivers Board and General Powers) Bill.
Read Second Time. [5th May.
Local Authorities and Local Government Officers (Joint Councils) Bill.
Read First Time. [10th May.
London Passenger Transport Board Bill.
Amendments considered. [10th May.
Marriages Provisional Order Bill.
Read Second Time. [11th May.
Patents etc. (International Conventions) Bill.
Reported, with Amendments. [10th May.
Post Office (Sites) Bill.
Read Third Time. [11th May.
Prevention and Treatment of Blindness (Scotland) Bill.
Read Third Time. [6th May.
Redcar Corporation Bill.
Reported, with Amendments. [5th May.
Road Haulage Wages (No. 2) Bill.
Read Second Time. [11th May.
Wakefield Corporation Bill.
Read Second Time. [5th May.

An Ordinary Meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1 (Tel. : Langham 2127), on Thursday, the 26th May, at 8.30 p.m., when an address will be given by Dr. L. A. Weatherly, on : "Debatable Medico-Legal Episodes in my Days before Yesterday."

Societies.

The Law Society.

HONOURS EXAMINATION.

MARCH, 1938.

At the Examination for Honours of Candidates for Admission on the Roll of Solicitors of the Supreme Court, the Examination Committee recommended the following as being entitled to Honorary Distinction (the names of the Solicitors to whom the candidates served under Articles of Clerkship are printed in parentheses) :—

FIRST CLASS.

(In Order of Merit.)

1. Noel Copeland Scragg, LL.B. Liverpool (Sir Samuel Brighouse, of the firm of Messrs. Brighouse, Jones & Co., of Ormskirk).
2. Bernard Abraham Perkoff (Mr. Jonas de Meza, of the firm of Messrs. De Meza & Menasse, of London).
3. Colin Henry Oliver, LL.B. London (Mr. Philip Robert Kimber, of London).

SECOND CLASS.

(In alphabetical order.)

Jack Alexander Allerton (Mr. John Toovey, of the firm of Messrs. Godfrey, Warr & Co., of London).

Harry Field Andrews (Mr. Edwin Dennis Berry and Mr. Eric Denis Berry, both of Reading).

Cyril Franklin Brooke, B.A. Cantab. (Mr. Charles Eaton Mills, of the firm of Messrs. Mills, Lockyer, Church & Evill, of London).

Richard Keniston Browning (Mr. Reginald Arthur Peter, of the firm of Messrs. Peter & Gainsford, of Looe).

Bernard Bauly Campbell (Mr. Robert Lake, of the firm of Messrs. Robbins, Olivey & Lake, of London).

Max David Engel (Mr. Kenneth Rutherglen Leader, of the firm of Messrs Parker, Thomas & Leader, of London).

Arthur Garrett, B.A., LL.B. Leeds (Mr. Claude Guy Leatham and Mr. Ralph Sweeting, B.A., LL.B., both of the firm of Messrs. Claude Leatham & Co., of Wakefield).

Bernard Carlyle Haskoll, LL.B. London (Mr. George Frederick Coleman, of the firm of Messrs. Coleman & Co., of Hove ; and Messrs. Waterhouse & Co., of London).

Charles Hughes, LL.B. London (Mr. Sydney William Plowright Pooles, of the firm of Messrs. Mellows & Sons, of Peterborough and London).

Nicholas Einon Hopkin John (Mr. Philip Evan Phillips, of the firm of Messrs. Phillips & Phillips, of Cardiff).

Leonard Kasler (Mr. Jacques Cohen, B.A., of the firm of Messrs. Jacques, Asquith and Jacques, of London).

Michael Shawcross (Mr. James Oliver Stacey, of the firm of Messrs. Macdonald & Stacey, of London).

Ronald Thomas Fryer Smith, LL.M. Liverpool (Mr. Oswald Fryer Smith, of the firm of Messrs. T. J. Smith & Son, of Liverpool).

Eulalie Evan Spicer, M.A. London (Mr. Edward Frank Champion, LL.B. ; and Mr. Cyril Frank Champion, both of the firm of Messrs. Champion & Co., of London).

John Phillips Swaffin (Mr. Thomas Edwin Easterbrook, of the firm of Messrs. Gowman, Easterbrook & Co., of Paignton).

James Denis Tattersall (Mr. Henry Isaac Shaftoe, of the firm of Messrs. Shaftoe, Isle & Shaftoe, of York ; and Messrs. Griffith & Son, of London).

Frederic George Timmins (Mr. Archibald William Rogers, of the firm of Messrs. Ashby, Rogers & Fournier, of London).

THIRD CLASS.

(In alphabetical order.)

Peter Berry (Mr. Walter George Burt, of the firm of Messrs. Hillman, Burt & Warren, of Eastbourne).

Harry Duxbury (Mr. John William Booth, of Oswaldtwistle).

Adam McCarlie Findlay (Mr. Clifford Kent Wright, B.A., of London).

Benjamin Legh Balfour Hutchings (Mr. Geoffrey Balfour Hutchings, of the firm of Messrs. Lovell, White & King, of London).

Frederick George Mossman, LL.B. Leeds (Mr. Frederick Adolph Tremel Mossman, of the firm of Messrs. Scott and Mossman, of Bradford).

Alexander Meadows Rendel, B.A. Oxon (Mr. William Vincent Rendel, of the firm of Messrs. Parker, Garrett & Co., of London).

David Fleming Roberts (Mr. Charles Walker Holmes, of the firm of Messrs. Holmes, Son & Pott, of London).

Peter Sully Stowe, LL.B. London (Mr. Harold Brown Hann, of the firm of Messrs. Llewellyn & Hann, of Cardiff).

David Gordon Thomas, LL.B. Wales (Mr. Jethro Owen Davies, of the firm of Messrs. Evan Davies & Son, of Cardiff).

John Herbert Tuffee (Mr. Harold Tuffee, of the firm of Messrs. Harold Tuffee & Smith, of Gravesend).

George Charles Wade (Mr. Thomas Howard Wordsworth, of the firm of Messrs. Hewlett & Co., of London).

Owen Albert Walden, LL.B. London (Mr. Charles Maurice Wainewright Sandford Freeman, of London).

Humphrey Norden Weber (Mr. Douglas Herbert Wiseman, of the firm of Messrs. Douglas Wiseman & Co., of London).

Charles Percival Law Whishaw, B.A. Oxon (Formerly a barrister-at-law).

Christopher Wilkinson (Mr. Guy Wolfe Gotto, of the firm of Messrs. Warrens, of London).

Thomas Edward Wootton (Mr. Frederick George Stevens, of the firm of Messrs. Bowles & Stevens, of Worthing; and Mr. Courtenay Stevens, of the firm of Messrs. Petch & Co., of London).

The Council of The Law Society have accordingly given a Class Certificate and awarded the following Prizes:—

To Mr. Scragg—The Clement's Inn Prize—Value about £34.

To Mr. Perkoff—The Daniel Reardon Prize—Value about £17.

To Mr. Oliver—The Clifford's Inn Prize—Value about £5 5s.

The Council have given Class Certificates to the Candidates in the Second and Third Classes.

One hundred and thirty-one candidates gave notice for Examination.

ANNUAL GENERAL MEETING.

The Annual General Meeting of the members of The Law Society will be held in the Hall of the Society on Friday, the 8th July, at 2 p.m.

PROVINCIAL MEETING, 1938.

The Provincial Meeting of The Law Society will be held this year at Manchester, on Tuesday and Wednesday, the 27th and 28th September.

The Hardwicke Society.

A meeting of the Society was held on Friday, 6th May in the Middle Temple Common Room, the President, Mr. G. E. Llewellyn Thomas, in the chair. Miss M. Morgan Gibbon moved: "That this House approves the principle of equal pay for equal work." Mr. C. E. Scholefield opposed. There also spoke: Mr. L. Travers, Mr. A. L. Gale, Mr. J. A. Petrie (Immediate Past President), Miss D. Knight Dix, Mr. Lewis Sturge (Hon. Treasurer), Capt. W. R. Starkey, Mr. N. N. McKinnon, Miss Kirkby Gomes, Mr. R. H. Hunt, Mr. L. S. Weinstock, Miss L. MacGarvey, Mr. Norman Edwards (Hon. Secretary). The Hon. Mover having replied, the house divided, and the motion was carried by five votes.

Solicitors' Benevolent Association.

The monthly meeting of the directors was held at 60 Carey Street, W.C.2, on Wednesday, 4th May.

Mr. F. L. Steward (Wolverhampton) was in the chair and the following directors were present: Mr. H. F. Plant (vice-chairman), Sir Norman Hill, Bart., Mr. G. L. Addison, Mr. E. E. Bird, Mr. G. C. Blagden, Mr. G. S. Blaker (Henley), Mr. W. E. M. Blandy (Reading), Mr. P. D. Botterell, C.B.E., Sir E. Cook, C.B.E., Mr. C. H. Culross, Mr. T. S. Curtis, Mr. W. H. Day (Maidstone), Mr. E. F. Dent, Mr. G. Keith, Mr. C. W. Lee, Mr. C. G. May, Mr. R. C. Nesbitt, Mr. W. N. Riley (Brighton), Mr. E. Sant (Salisbury), Mr. F. S. Stancliffe (Manchester), Mr. H. White (Winchester), and the secretary. £2,017 was distributed in grants to necessitous cases and forty-seven new members were elected.

ADVANCED LEGAL STUDIES.

The Lord Chancellor has appointed The Right Hon. Lord Macmillan, G.C.V.O., LL.D.(Chairman), The Hon. Mr. Justice Farwell, Professor Harold Cooke Gutteridge, K.C., LL.D., Professor Robert Warden Lee, D.C.L., Professor Herbert Felix Jolowicz, LL.D., Professor Charles Ernest Smalley-Baker, and Mr. Geoffrey Reynolds Yonge Radcliffe, D.C.L., to be a committee to take into consideration Branch B of the Report of the Committee on Legal Education appointed by the Lord Chancellor on 4th August, 1932 (1934, Cmd. 4663); to advise as to the best practicable means of carrying into effect the recommendations therein contained with regard to the establishment in London of an Institute for the promotion of advanced studies in the history and principles of law; to frame a constitution for such Institute; and to report. Mr. A. J. N. Paterson, Lord Chancellor's Department, has been appointed Secretary to the Committee.

Legal Notes and News.

Honours and Appointments.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to appoint Mr. THOMAS DAVID KING MURRAY, K.C., to be a Member of the Scottish Land Court and Chairman of the Court in the room of the late Honourable Lord Macgregor Mitchell.

The Colonial Office announces the following appointments and promotions in the Colonial Legal Service: Mr. C. H. BUTTERFIELD appointed Assistant Legal Adviser, Federated Malay States; Mr. J. C. H. OLDHAM appointed Magistrate, Malaya; Mr. P. F. Y. RADCLIFFE appointed Magistrate, Malaya; Sir B. A. CREAN (Chief Justice, British Guiana) appointed Chief Justice, Cyprus; Mr. G. C. GRIFFITH WILLIAMS (Chief Justice, St. Vincent) appointed Puisne Judge, Cyprus.

The Board of Trade have made the following temporary appointments: Mr. HERBERT HORNBY GAINE, Senior Assistant Official Receiver in the Bankruptcy (High Court) Department, to be Official Receiver in the Bankruptcy (High Court) Department, with effect from the 9th May, 1938, in the place of Mr. S. W. Hood; Mr. TUDOR CALEDFRYN CADWGAN, Official Receiver in Bankruptcy at Swansea, to be Senior Assistant Official Receiver in the Bankruptcy (High Court) Department, with effect from the 16th May, 1938, in the place of Mr. H. H. Gaine; Mr. ALFRED CLARKE WILLIAMS, Assistant Official Receiver in Bankruptcy at Manchester, to be Official Receiver for the Bankruptcy District of the County Courts holden at Swansea, Aberdare and Mountain Ash, Bridgend, Merthyr Tydfil, Neath and Port Talbot, with effect from the 16th May, 1938, in the place of Mr. T. C. Cadwgan.

Mr. W. T. S. STALLYBRASS, O.B.E., D.C.L., Principal of Brasenose College, Oxford, has been elected an Honorary Master of the Bench of the Inner Temple.

Mr. E. HAINES, Assistant Solicitor to the Nottingham Corporation, has been appointed Assistant Town Clerk of Croydon, and Mr. R. J. EDMONDSON, Chief Assistant Solicitor to the Lancaster Corporation, has been appointed Assistant Solicitor and Deputy Clerk of the Peace of Croydon. Mr. Haines was admitted a solicitor in 1928, and Mr. Edmondson in 1933.

Notes.

The Twenty-ninth Annual General Meeting of the City of London Solicitors' Company will be held at the Guildhall, London, E.C., on Wednesday, the 18th May, at 5.30 p.m.

Mr. C. T. Flower, Mr. S. C. Ratcliff, and Mr. William Angus have been appointed members of the Historical Manuscripts Commission, and Mr. R. L. Atkinson has been appointed Secretary of the Commission.

On Wednesday, 18th May, at 4.30 p.m., Mr. Pierre Adrien Picarda, LL.D., Barrister-at-Law, Avocat à la Cour d'Appel de Paris, will read a paper before the Grotius Society on "The Status of the French Married Woman."

Mr. A. W. Cockburn, K.C., former Recorder of Oxford, was welcomed by members of the Bar last Tuesday, when he took his seat for the first time as Deputy Chairman of the London Sessions, in succession to Sir Herbert Wilberforce, who retired recently.

An announcement of the death on 9th May of Mr. Henry Joseph Taylor, aged fifty-four, for forty years in the employment of Messrs. Field, Roscoe & Co., and for many years their managing clerk in the Probate and Divorce Division, appeared in *The Times* last Wednesday.

An agricultural conference will be held at Hereford by the Incorporated Society of Auctioneers on 15th and 16th June. Professor J. A. Scott Watson will read a paper on "Food and National Defence," and Mr. N. E. Mustoe will address the conference on "Recent Developments on Agricultural Law.',

There will be a joint meeting of the Gray's Inn Debating Society with the Cambridge University Union Society in Hall, by kind permission of the Masters of the Bench, at 8.30 p.m., on Friday, the 13th May, when the motion before the house will be: "That National Sovereignty is a false ideal." Proposer, Mr. P. B. Hague, Emmanuel College. Opposer, Mr. V. A. Annett, Corpus Christi College. There will also be a joint meeting of the Society with the Inns of Court Labour Debating Society in Hall, at 8.30 p.m., on Friday, 20th May.

A conference to explain for firms' executives and others the far-reaching changes in factory law brought about by the new Factories Act has been arranged by the Industrial Welfare Society to take place in Bristol on Wednesday, 18th May, from 3.30 to 6 p.m. at the Grand Hotel. The conference will be addressed by Mr. H. Samuels, M.A., Barrister-at-Law (author of "The Factories Act, 1937," "The Law Relating to Industry," etc.), who has already conducted lecture courses on the Act in London and many provincial centres. Full particulars may be had from the Secretary of the Society, 14, Hobart Place, London, S.W.1.

Christ Church Law Club is holding its Third Annual Dinner at the Café Royal, Regent Street, W.1, on 26th May, at 7.15 p.m., for 7.45 p.m. Those present will include Sir Thomas Inskip (President) and the following-mentioned Vice-Presidents: Lord Atkin, Lord Porter, The Master of the Rolls, the President of the Probate, Divorce and Admiralty Division, Mr. Justice Luxmoore, Mr. Justice Hilbery, the Attorney-General, with Lord Camrose, Mr. A. P. Herbert, M.P., Professor F. A. Lindemann, F.R.S., the Under-Treasurer of Gray's Inn, and the Very Reverend A. T. P. Williams (Dean of Christ Church). Tickets may be obtained from the Honorary Secretary, Mr. Gerald E. Johnstone, Treasury Solicitor's Department, Storey's Gate, Westminster, S.W.1.

Wills and Bequests.

Mr. Edgar James Birdsall, retired solicitor, of Scarborough, left £24,563, with net personalty £23,179.

Mr. Edgar Cozens, solicitor, of Hampton, Middlesex, left £23,975, with net personalty £22,224.

Mr. Frederick Charles James, solicitor, of Solihull, left £101,442, with net personalty £98,637.

SUMMER ASSIZES.

The following days and places have been fixed for holding the Summer Assizes, 1938:—

NORTHERN CIRCUIT.—Greaves-Lord and Tucker, JJ.—Saturday, 21st May, at Appleby; Tuesday, 24th May, at Carlisle; Monday, 30th May, at Lancaster; Tuesday, 7th June, at Liverpool; Monday, 4th July, at Manchester.

NORTH-EASTERN CIRCUIT.—Goddard and Atkinson, JJ.—Saturday, 11th June, at Newcastle; Tuesday, 21st June, at Durham; Wednesday, 29th June, at York; Tuesday, 5th July, at Leeds.

MIDLAND CIRCUIT.—Asquith, J.—Monday, 16th May, at Aylesbury; Thursday, 19th May, at Bedford; Tuesday, 24th May, at Northampton; Monday, 30th May, at Leicester; Wednesday, 8th June, at Oakham; Thursday, 9th June, at Lincoln; Monday, 20th June, at Derby; Tuesday, 28th June, at Nottingham. Wrottesley, J.—Wednesday, 6th July, at Warwick. Lawrence and Wrottesley, JJ.—Monday, 11th July, at Birmingham.

Court Papers.

Supreme Court of Judicature.

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness	MR. JUSTICE FARWELL. Witness Part II
	Mr.	Mr.	Mr.	Mr.
May 16	Andrews	Blaker	Jones	*Andrews
,, 17	Jones	More	Ritchie	*Jones
,, 18	Ritchie	Hicks Beach	Blaker	*Ritchie
,, 19	Blaker	Andrews	More	*Blaker
,, 20	More	Jones	Hicks Beach	*More
,, 21	Hicks Beach	Ritchie	Andrews	Hicks Beach

DATE.	GROUP II. MR. JUSTICE MORTON. Witness Part I.	MR. JUSTICE BENNETT. Non-Witness	GROUP I. MR. JUSTICE CROSSMAN. Witness Part I.	MR. JUSTICE SIMONDS. Witness Part II.
	Mr.	Mr.	Mr.	Mr.
May 16	*Hicks Beach	More	*Ritchie	Blaker
,, 17	*Andrews	Hicks Beach	*Blaker	More
,, 18	*Jones	Andrews	*More	Hicks Beach
,, 19	Ritchie	Jones	*Hicks Beach	Andrews
,, 20	Blaker	Ritchie	*Andrews	Jones
,, 21	More	Blaker	Jones	Ritchie

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 26th May 1938.

	Div. Months.	Middle Price 11 May 1938.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	111	3 12 1	3 4 4
Consols 2½%	JAJO	74½	3 7 1	—
War Loan 3½% 1952 or after ...	JD	101⅜	3 9 1	3 7 8
Funding 4% Loan 1960-90	MN	113	3 10 10	3 3 4
Funding 3% Loan 1959-69	AO	98½	3 0 11	3 1 6
Funding 2½% Loan 1952-57	JD	96½xd	2 17 0	2 19 10
Funding 2½% Loan 1956-61	AO	91	2 14 11	3 0 11
Victory 4% Loan Av. life 22 years ...	MS	111½	3 11 11	3 5 5
Conversion 5% Loan 1944-64 ...	MN	113	4 8 6	2 8 6
Conversion 4½% Loan 1940-44 ...	JJ	106½	4 4 6	1 18 1
Conversion 3½% Loan 1961 or after	AO	102	3 8 8	3 7 6
Conversion 3% Loan 1948-53 ...	MS	102	2 18 10	2 15 1
Conversion 2½% Loan 1944-49 ...	AO	99¼	2 10 4	2 11 6
Local Loans 3% Stock 1912 or after	JAJO	87½	3 8 7	—
Bank Stock	AO	338	3 11 0	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	81	3 7 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	88	3 8 2	—
India 4½% 1950-55	MN	112½	4 0 0	3 4 6
India 3½% 1931 or after	JAJO	93	3 15 3	—
India 3% 1948 or after	JAJO	79½	3 15 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	109½	4 2 2	3 18 5
Sudan 4% 1974 Red. in part after 1950	MN	107½	3 14 5	3 4 9
Tanganyika 4% Guaranteed 1951-71	FA	109	3 13 5	3 2 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	106½	4 4 6	2 10 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	92	2 14 4	3 1 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	105	3 16 2	3 12 1
Australia (Commonw'th) 3% 1955-58	AO	89	3 7 5	3 15 11
*Canada 4% 1953-58	MS	109	3 13 5	3 4 7
*Natal 3% 1929-49	JJ	101	2 19 5	—
New South Wales 3½% 1930-50 ...	JJ	97	3 12 2	3 16 4
New Zealand 3% 1945	AO	93	3 4 6	4 3 4
Nigeria 4% 1963	AO	108	3 14 1	3 10 3
Queensland 3½% 1950-70	JJ	97	3 12 2	3 13 2
*South Africa 3½% 1953-73	JD	102	3 8 8	3 6 7
Victoria 3½% 1929-49	AO	97	3 12 2	3 16 10
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	86½	3 9 4	—
Croydon 3% 1940-60	AO	95	3 3 2	3 6 6
*Essex County 3½% 1952-72 ...	JD	103	3 8 0	3 4 10
Leeds 3% 1927 or after	JJ	86	3 9 9	—
Liverpool 3½% Redeemable by agreement, with holders or by purchase...	JAJO	100	3 10 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71½	3 9 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	85½	3 10 2	—
Manchester 3% 1941 or after ...	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	97½	2 11 3	2 15 3
Metropolitan Water Board 3% "A" 1963-2003	AO	87½	3 8 7	3 9 9
Do. do. 3% "B" 1934-2003 ...	MS	89½	3 7 0	3 8 0
Do. do. 3% "E" 1953-73 ...	JJ	97	3 1 10	3 2 10
*Middlesex County Council 4% 1952-72	MN	107	3 14 9	3 7 3
* Do. do. 4½% 1950-70	MN	111	4 1 1	3 7 5
Nottingham 3% Irredeemable ...	MN	86	3 9 9	—
Sheffield Corp. 3½% 1968	JJ	103	3 8 0	3 6 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	109	3 13 5	—
Gt. Western Rly. 4½% Debenture ...	JJ	117½	3 16 7	—
Gt. Western Rly. 5% Debenture ...	JJ	129½	3 17 3	—
Gt. Western Rly. 5% Rent Charge ...	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	127½	3 18 5	—
Gt. Western Rly. 5% Preference ...	MA	116½	4 5 10	—
Southern Rly. 4% Debenture ...	JJ	107½	3 14 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	108½	3 13 9	3 9 5
Southern Rly. 5% Guaranteed ...	MA	126½	3 19 1	—
Southern Rly. 5% Preference ...	MA	113½	4 8 1	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.